

FINAL AMENDED

# Forest Legacy Program Implementation Guidelines



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USDA Forest Service  
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## INTRODUCTION

The Cooperative Forestry Assistance Act (CFAA) of 1978, as amended, (16 U.S.C. 2101 et. seq.) recognizes that the majority of the Nation's productive forest lands are in private ownership; that private landowners are facing increased pressure to convert their forest lands to other uses; that greater population density, user demands and restrictions on Federal and other public lands are placing increased pressures on private lands to provide a wide variety of products and services from working forests including timber and other forest commodities, fish and wildlife habitat, watershed function and water supply, aesthetic qualities, historical and cultural resources, and recreational opportunities; and that 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.

In 1990, the Forest Legacy Program (FLP) was established to promote the long-term integrity of forestlands. The Secretary was directed to establish the FLP in cooperation with State, regional, and other units of government. In carrying out this mandate, the Secretary of Agriculture is authorized to acquire lands and interests in lands in perpetuity for inclusion in the FLP. Landowner participation in the FLP, including the sale of lands and interests in lands, is entirely voluntary. The Program is implemented through State participation, consistent with these National FLP guidelines, and as described in each State Assessment of Need. The FLP goals and objectives are accomplished through Forest Service (FS) cooperation with State partners, Federal agencies, local units of government, forest landowners and other partners. The FLP identifies and protects environmentally important private forestlands that are threatened by conversion to nonforest uses and provides the opportunity for continuation of traditional forest uses, such forest management activities and outdoor recreation.

The guidelines are organized in three parts:

PART 1 - General Program Guidelines: Program direction applicable to all aspects of the FLP.

PART 2 - State Grant Program Guidelines: Program direction applicable to States and Forest Service (FS) Regions/Area/IITF where a State has elected the State grant option and where ownership of lands or interests in lands is vested in a State or subdivision of a State.

PART 3 - Federal Acquisition Program Guidelines: Program direction applicable to States and FS Regions/Area/IITF selecting the Federal acquisition and ownership process, where ownership of lands or interests in lands is vested in the United States (U.S.).

## PART I - GENERAL PROGRAM GUIDELINES

### I. Authority and Purpose of the Forest Legacy Program (FLP)

#### A. Authority

The Cooperative Forestry Assistance Act (CFAA) of 1978, as amended, (16 U.S.C. 2101 et. seq.) provides authority for the U.S. 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; P.L. 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.

#### B. Purpose of the Forest Legacy Program

The purpose of the FLP is to ascertain and protect environmentally important forest areas that are threatened by conversion to nonforest uses.

FLP seeks to promote forestland protection and other conservation opportunities. Such purposes shall 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. Both purchased and donated lands and interests in lands through the use of conservation easements and fee-simple purchase are used to acquire forested land meeting Forest Legacy purposes from willing sellers or donors.

#### C. 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)). Delegations only apply within the U.S. Department of Agriculture and its agencies. The role of State and Regional programs, and the right of States to elect the State Grant Option, are contained in the authorizing statute and these program implementation guidelines.

### II. Description of Terms and Abbreviations

Assessment of Need (AON) is a document produced by a State, or a federally recognized Indian Tribe, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC). The AON contains the an assessment of the forests and forest uses, a description of forces that are converting forests to nonforest uses, describes Eligibility Criteria developed by the State to identify important forest areas to be proposed as Forest Legacy Areas (FLA), and acts as a guide to implementation of FLP in the State.

Assessment of Need (AON) Amendment is a document produced by a State to amend their AON, to add or delete Forest Legacy Areas (FLA), or to modify the Eligibility Criteria.

CFAA is the Cooperative Forestry Assistance Act of 1978, P.L. 95-313, 92 stat. 365, 16 U.S.C., 2101 et seq. (as amended through P.L. 107-195, June 16, 2002).

Conservation Easement is 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. Easement restrictions are tailored to the particular property and to the interests of the individual landowner. All FLP conservation easements are held in perpetuity.

Eligibility Criteria are 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).

Federal Appraisal Standards are those standards contained in the publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000," or subsequent amendments or updates. These standards are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9328 (ISBN 0-16-038050-2) or online at <http://www.usdoj.gov/enrd/land-ack/>

Forest Legacy Area (FLA) is 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 AON for the FLP. Acquisition of lands and interests in lands for the FLP can only occur within approved FLAs.

Forest Legacy Area (FLA) Boundary Adjustment is a minor change to an existing FLA to create a more logical or manageable boundary.

Forest Legacy Program (FLP) Project is an individual or series of land or interest in land acquisition transaction(s). The transaction(s) can be on an individual tract or multiple tracts in a distinct geographical area. A FLP project relates to a single funding event in a given fiscal year. FLP projects can have a single parcel that can be completed at one closing or more than one parcel that can be completed in a succession of closings. If a successive FLP project is proposed on a parcel or in a distinct geographic area each transaction is treated as an independent unit in the project selection process and funding is not guaranteed.

Forest Service (FS) is the United States Department of Agriculture Forest Service.

Forest Service Region/Area/IITF refers to 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, or multi-resource management plans, are prepared with the purpose of achieving long-term stewardship of forestland. Such plans identify landowner objectives and

describe actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, and fish and wildlife resources, and other conservation values identified on the tract. Plans are to be prepared by a professional resource manager. A Forest Stewardship Plan that meets the requirements of the Forest Stewardship Program or a multi-resource management plan is required for FLP qualification. The State Forester or equivalent, or their designee must approve the plan. (See Appendix F for sample content of a Forest Stewardship Plan).

Full Fee Purchase is 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 are the collection of States that make up the National Association of State Foresters (NASF) Regions. The three regions are: North (consisting of the States within the FS Northeastern Area), South (consisting of all the States within the FS Southern Region, and the Territories of the International Institute of Tropical Forestry), and the West (consisting of all the States within the FS 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 B for a map of the Forest Service's Regions/Area/IITF)

Indirect costs relate to costs of the management and administration of the FLP. Indirect costs, unlike salary, which is a direct cost, are defined as costs not readily assignable to a specific legacy acquisition. (See OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," for a description of indirect and direct costs).

In-kind contributions are non-cash contributions, including third-party contributions. In-kind contributions must be expenses necessary to accomplish program activities, and allowable if the Federal Government were required to pay for them. (See Appendix C for applicable OMB Circulars)

Interests in Land are a right, claim, or legal share in real property that are less than the full title.

Land Trust is 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.

Market Value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. (*Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000, p.4.*)

Multi-State Entity is a government-established organization involving two or more States or Indian tribes whose jurisdiction encompasses all or portions of the land area of an FLA(s).

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

Nonfederal Cost Share refers to the nonfederal cost-share required to receive FLP funding. There are three main categories of activities that meet this requirement: 1) the value of land, or interests in land, dedicated to the FLP that is not paid for by the Federal government, 2) nonfederal costs associated with program implementation, and 3) other nonfederal costs associated with a grant or other agreement which meets FLP purposes. The nonfederal cost-share must be documented, and in the case of a grant, must meet the timing, terms and conditions of the grant.

#### Nonforest Uses-

Noncompatible - nonforest uses are uses of the land inconsistent with maintaining forest cover including, but not limited to, activities that result in extensive surface disturbance such as residential subdivisions, commercial development, and mining. These uses generally should be excluded from FLP conservation easements or land purchases. FLP funds should only be used on parcels with forestland as defined in the State's AON.

Compatible - nonforest uses are nonforest uses of the land that may be compatible with forest uses as part of an undeveloped landscape, including cultivated farmland, pasture, grassland, shrubland, open water, and wetlands. These nonforest uses should be less than 25 percent of the total area. Forest Legacy funds should only be used on parcels with forestland as defined in a State's AON. Other funding sources may be used to protect nonforested areas on those parcels with less than the minimum required forest cover.

Nontrust Allotment Lands are privately owned fee simple lands owned by tribal members and if they are forested, are eligible for the FLP when they are located within an approved FLA. 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.

Pass-through describes 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 sale at market value.

Payment in Lieu of Taxes (PILT) is made by tax-exempt entities, including the Federal government, to compensate local jurisdictions for tax revenues foregone as a result of ownership by a tax-exempt owner. Any FLP tract acquired in fee and held by the FS is eligible for PILT payments (entitlement land as defined at 31 U.S.C. 6901). Federal funds for PILT are not authorized for any land or interests in land held by nonfederal entities, or for conservation easements held by the United States.

Program Funds are FLP funds that are appropriated by Congress and allocated by the FS to three categories: Project funds, Administrations funds, and AON Preparation funds.

Project Evaluation Criteria are developed by the States, in consultation with the State Forest Stewardship Coordinating Committees (SFSCC), to evaluate the eligible tracts submitted by interested landowners for inclusion in the FLP.

Relocation refers to the provision in the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970 (PL 91-646 or 42 U.S.C. 4601) which requires Federal agencies and programs to pay for the relocation of a person displaced by a federally funded real estate transaction.

Reserved Areas are designated areas where nonforest uses (e.g. 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. To the extent possible these areas of non-compliance should be excluded from the FLP project.

Reserved Interest Deed is where the grantee (government) acquires all rights, titles, and interests in a property, except those rights, titles, and interests that may run with the land that are expressly reserved by a grantor (landowner).

Secretary is the U.S. Secretary of Agriculture.

State refers to any of the 50 States, Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Mariana Islands, and American Samoa participating in the FLP.

State Forest Stewardship Coordinating Committees (SFSCC) are defined, and their duties are described, in Section 19(b) of the CFAA (16 U.S.C. 2113). They are chaired and administered by the State Foresters, or equivalent State officials, with membership composed of representatives from the following agencies, organizations, or 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 land owners; 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 AON, AON amendments, and the determination of project priorities.

State Lead Agency is that 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.

Tribal Assessments of Need- An AON is developed by a federally recognized Indian Tribe in cooperation with the State and the SFSCC. Only nontrust allotment lands are eligible for FLP. Lands or interests in lands purchased under a Tribal FLP can be through a grant to a cooperating State or through the Federal acquisition option.

Working Lands Conservation Committee is a committee of the NASF having coordination and consultation responsibilities within that organization regarding the FLP.

### **III. National Environmental Policy Act (NEPA)**

NEPA applies to certain proposed actions of the Federal Government. NEPA does not apply to the independent actions of States or private property owners. It has no applicability to a private property owner's use or development of his/her property rights, nor the development of a State's FLP. It could apply to Federal agency actions undertaken on private property if the U.S. acquired a right to permit or deny certain land uses and then proposed to exercise that right, but in such an instance it would be the U.S. that would be required to satisfy NEPA requirements, not the private owner.

It should be known that:

1. A Programmatic Environmental Assessment and a Finding of No Significant Impact was completed for the national FLP and signed by the Chief of the Forest Service.
2. Under the Federal acquisition option, the FS NEPA regulations (Forest Service's Environmental Policy and Procedures Handbook 1909.15-92.1, effective 9/21/92), the acquisition of an individual Forest Legacy tract and/or easement may be categorically excluded from the preparation of an Environmental Impact Statement or an Environmental Assessment unless scoping indicates extraordinary circumstances exist.

### **IV. Coordination with State Forestry Agencies**

Whereas most State lead agencies are State Forestry agencies, and the CFAA establishes a broad cooperative relationship between the FS and State Foresters, the FS shall appoint a representative to coordinate with the Working Lands Conservation Committee of the NASF (or its successor) regarding the FLP. Periodically, the Director of Cooperative Forestry, and the appointed FS representative shall meet with the NASF Working Lands Conservation Committee to assess program operations, accomplishments, and policies. In States where the State Forestry agency is not the designated State lead agency for the FLP, a coordinating mechanism shall be instituted between the State lead agency, the State Forester, and the SFSCC.

### **V. Assessment of Need (AON) and Identification of Forest Legacy Areas (FLA)**

A State or a federally recognized Indian tribe conducts an AON, in cooperation with the SFSCC, to document their need for inclusion in the FLP, through an evaluation of current forests, forest uses, and the trends and forces causing conversion to nonforest uses. Federally recognized Indian Tribes must cooperate with the SFSCC when conducting an AON for nontrust allotments lands. The AON is intended to define the Eligibility Criteria to be used in the identification of important forest areas to be proposed as an FLA; identify and delineate the boundaries of forest areas meeting the Eligibility Criteria for designation as an FLAs; determine through analysis what defines "threatened" and "environmentally important forests"; and outline the State's project evaluation and prioritization procedures. The AON must be developed in consultation with SFSCC and approved by the State lead agency.

State lead agencies may utilize the services of land trusts or other entities in preparing the assessment. Information from existing sources may be used to prepare the AON, instead of initiating new studies that would duplicate existing data. Examples of appropriate sources include State Forest Resources 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 AON 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 AON must address the following as they relate to the purpose of the FLP:

1. Forest resources including:
  - Aesthetic and scenic values;
  - Fish and wildlife habitat;
  - Minerals resource potential;
  - Public recreation opportunities;
  - Soil productivity;
  - Forest products and timber management opportunities;
  - Watershed values including water quality protection;
2. The present and future threat of conversion of forest areas to nonforest uses. States are responsible for defining the conversion threat(s);
3. Historic uses of forest areas, and trends and projected future uses of forest resources;
4. Current ownership patterns and size of tracts, and trends and projected future ownership patterns;
5. Cultural resources that can be effectively protected;
6. Outstanding geological features;
7. Threatened and endangered species;
8. Other ecological values;
9. Public recreational opportunities;
10. Protected land in the State, to the extent practical, including Federal, State, and municipal lands and land trust organizations lands;
11. Issues identified by the SFSCC and in the public involvement process.

Using the above information the AON shall include the following:

1. Identification of applicable Eligibility Criteria;
2. Identification of specific FLA(s) for designation;
3. Specific goals and objectives to be accomplished by the FLP;
4. Process to be used by the State lead agency to evaluate and prioritize projects to be considered for inclusion in the FLP.

The project evaluation and prioritization process outlined in the AON should reflect the direction set forth in the CFAA to 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. 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 AON 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 AON.

The composition of the SFSCC is defined in Section 19(b) of the CFAA (16 U.S.C. 2113). States are encouraged to broaden this composition to include interests appropriate to benefit the FLP. This committee cooperates with the State lead agency in the preparation of the AON, 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 Program.

Public participation and involvement in the AON preparation is a State responsibility. In the absence of established State procedures, NEPA may serve as an appropriate model for public involvement. The State lead agency will solicit involvement and comments on the AON 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, identifying and clarifying issues.

Based on the State-wide AON, the State lead agency, in consultation with the SFSCC, identifies specific geographic FLAs that meet the Eligibility Criteria, and recommends them to the FS for designation as of a FLA.

States are encouraged to cooperate in the identification of FLAs that cross State boundaries and to work together to coordinate acquisitions of lands or interests in lands that have complementary purposes. However, program implementation is undertaken by the individual States (State Grant Option) or by the FS (Federal Option).

The identification of proposed FLAs must include:

1. Location of each geographic area on a map and a written description of the proposed FLA boundary;
2. Summary of the analysis used to identify the FLA and its consistency with the Eligibility Criteria;
3. Identification of important environmental values, and how they will be protected and conserved;
4. The conservation goals or objectives in each FLA
5. List of public benefits that will be derived from establishing each FLA;
6. 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 program (Federal option); and
7. Documentation of the public involvement process and analysis of the issues raised.

## **VI. Eligibility Criteria for Establishing Forest Legacy Areas (FLAs)**

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 and be further developed through the AON.

FLA boundaries must encompass forestlands with significant environmental and other resource-based values. Areas may also include nonforested areas such as farms and villages if they are an integral part of the landscape and are within logical boundaries. Since FLA boundaries may not correspond to property boundaries, tracts located partially within the geographically defined FLA are eligible for the FLP, upon approval of a boundary adjustment by the FS Region/Area/IITF.

Indian reservations and tribal lands may have important features on the forested landscape. Indian tribes and States are encouraged to collaborate and to consider only nontrust allotment lands for designation as, or inclusion within, a FLA. Other tribal lands are already protected through the trust relationship between the U.S. Department of the Interior and the tribe and are ineligible for the FLP.

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:

1. Timber and other forest commodities
2. Scenic resources;
3. Public recreation opportunities;
4. Riparian areas;
5. Fish and wildlife habitat;
6. Known threatened and endangered species;
7. Known cultural resources;
8. Other ecological values.

The FS, State or unit of State or local government may only acquire lands and interests in lands identified within a FLA under FLP authority on a willing seller/willing buyer basis.

## **VII. AON and Amendment Approval**

The State lead agency must submit the AON, including proposed FLAs and Eligibility Criteria, to the FS Region/Area/IITF. The FS Region/Area/IITF with input from the FS Washington Office reviews the AON and works with the State lead agency to complete the AON. Once finalized, the FS Washington Office forwards the AON to the Secretary for final approval. Final approval establishes the FLP for the State.

AONs shall be periodically reviewed (at least at 5-year intervals) by the State lead agency, the FS Region/Area/IITF, and the SFSCC to assess whether AON amendments or updates are necessary. The results of reviews will be documented by the State lead agency. AONs should be amended as needed.

The State lead agency may amend the AON to make significant changes or minor adjustments. Significant changes include modifications to their FLP, changes to the FLA Eligibility Criteria,

or to add or delete a FLA. These changes need to be made in consultation with the SFSCC and with public involvement. FLAs and project evaluation criteria shall be of a scale and detail to effectively focus delivery of the FLP.

Significant Amendments to an AON may address the following:

1. Issues associated with maintaining the integrity of forestland and the proposed FLA specifically.
2. Revision, if any, of the FLA Eligibility Criteria.
3. Changes in policies or conditions that have occurred since the previous AON;
4. The identification of proposed FLA(s) and conservation goals or objectives associated with that FLA (see Section V for detail on FLA identification).

The Chief of the Forest Service, or designee, provides final approval of the Amendment of an AON authored by a State lead agency after consultation with SFSCC.

In addition, the State lead agency may complete minor AON amendments, such as FLA boundary adjustment or project prioritization process. These minor changes need to be coordinated with the SFSCC, and need review and approval by the appropriate FS Region/Area/IITF.

### **VIII. Multi-State Identification of Forest Legacy Areas**

States are encouraged to cooperate in the identification of FLA that cross State or Tribal boundaries and to work together to coordinate acquisitions of lands or interests in lands that have complementary purposes.

States may elect to jointly use an existing or new multi-State or regional entity to identify FLAs or develop FLP projects that cross State boundaries. The entity must be a government-established organization, whose jurisdiction encompasses all or portions of the land area of the FLA States involved. However, program implementation is undertaken by the individual States (State Grant Option) or by the FS (Federal Option).

The entity conducting a multi-State identification of FLAs is responsible for:

- Obtaining approval from the appropriate States or Indian tribes for FLAs within their boundaries,
- Cooperating with appropriate SFSCCs,
- Obtaining public comments on the identification of FLAs, and
- Complying with all other requirements of these guidelines.

### **IX. Project Selection Process**

The FS will conduct a project selection process to arrive at a prioritized national project list for consideration in the President's budget for the upcoming fiscal year. The project selection process and calendar of due date milestones are developed in consultation with the State lead agencies and FS Region/Area/IITF and communicated by the FS Washington Office. The FS

will ensure that national evaluation and prioritization criteria are communicated to the States and in a timely manner so that submitted projects adhere to strategic goals and objectives of FLP. Project selection steps are:

Step 1: Release Project Selection Calendar with Due Dates (See Appendix A for example)

The project selection process and calendar of due date milestones are developed in consultation with the States and FS Regions/Area/IITF and communicated by the FS Washington Office.

Step 2: State Project Prioritization and Submission

FLP project applications are accepted by the State lead agency as outlined in the State's AON. The SFSCC reviews and evaluates applications according to the criteria identified in the State's AON, authorizing statute, and other relevant direction and policy, and provides recommendations to the State lead agency. Projects approved and prioritized by the State lead agency are forwarded to the FS Region/Area/IITF for funding consideration. Only projects submitted through this process will be deemed eligible. Each State will prepare a list of projects and enter or update its list for submission to the FS via the Forest Legacy Information System or other means as requested.

Step 3: Forest Service Regional Review

FS Regions/Area/IITF will review submitted projects considering State priorities and national criteria. The purpose of this review is to improve project viability, facilitate the national project selection process and advance the strategic outcomes of the FLP. FS Regions/Area/IITF will submit projects to the FS Washington Office for funding consideration.

Step 4: National Review; Develop National Project List

The FS Washington Office will develop a prioritized national project list by convening a panel. There are 3 purposes of the panel; 1) assure that all projects meet Congressional and Administration direction; 2) assure that projects meet national program goals; and 3) develop a National List of ranked projects. The composition of the panel shall be developed annually in consultation between the State lead agencies and the FS, and will be representative of geographic regions. Project evaluation and ranking is based on the following national core criteria; project readiness will be considered as well as other evaluation considerations developed in consultation with State lead agencies and FS Regions/Area/IITF. The national core criteria are:

- Important – The public benefits gained from the protection and management of the property including environmental values, and the economic and social aspects;
- Threatened – Conversion to nonforest uses is likely or imminent and will result in a loss of forest values and public benefits; and
- Strategic – Fits with a larger conservation plan, strategy, and initiative and enhances previous conservation investments.

States newly entering FLP will be given a “New-State start-up” preference for an initial FLP project. This is a placeholder for planning purposes and does not guarantee project funding. In order to receive the New State start-up project funds the State must have an approved AON and the project must meet national core criteria and the State's

evaluation criteria and be submitted within the fiscal year that the placeholder is approved by Congress.

Step 5: Submit National FLP Project List to the Office of Management and Budget and to Congress

Each fiscal year, the FS Washington Office will submit a project list to the Office of Management and Budget for funding consideration in the President's budget. Once the President's budget has been completed, the FS Washington Office will notify the appropriate House and Senate Committees and Subcommittees of the recommended projects for the upcoming Fiscal Year.

**X. Program Fund Categories**

Forest Legacy funds are allocated to one of three categories: Project Funds, Administration Funds, and AON Preparation Funds. FLP funds may not be used for monitoring and enforcement.

A. Project Funds

Project funds are those used to directly purchase lands or interests in land joining the FLP. Project funds may be expended by the State lead agency or the FS, as applicable, to cover transaction costs, including but not limited to: appraisals and appraisal review, land surveys, closing costs, establishing baseline information, title work, purchase of title insurance, conservation easement drafting, and other real estate transaction expenses for those tracts. Project funds may also be expended to facilitate donations of land or interests in lands to a qualified and willing donee for FLP purposes, by paying for expenses directly related to the donation, including but not limited to, land surveys, conservation easement drafting, title work, and establishing baseline information. For an outright donation of a conservation easement or land, FLP program funds may not be used to pay for an appraisal. In the case of a partial donation of a conservation easement or land, an appraisal meeting Federal standards is required to determine the value of property. FLP funds may be used for appraisals on these partial donations. When Federal funds are used to purchase real property, including conservation easements, appraisal and acquisition work procedures must meet Federal standards.

B. Administration Funds

Administrative funds are the portion of funds used for day-to-day program management at all levels. Administration funds may be used for a variety of activities, including FLP program administration, personnel and overhead, and all activities identified as eligible uses of project funds to prepare projects and potential projects. Forest Legacy funds for administration shall be kept to a minimum. As a goal, all attempts should be made to keep administration funds under 15 percent of the total funds appropriated.

C. AON Preparation Funds

AON preparation funds may be made available to States to help defray the cost of preparing, or amending an AON.

## **XI. Process for Allocating Funds to Forest Service Regions/Area/IITF**

Following passage of the annual appropriations bill, the FS Washington Office develops the Forest Legacy Program Direction and allocates funds to the FS Regions/Area/IITF for distribution. The allocation process differs for each fund category described below.

### **A. Allocation of Project Funds**

Allocations to FS Regions/Area/IITF are based on the results of the national project selection process and the appropriations bill. Under the State grant option, FS Regions/Area/IITF will award grants to States for specific, identified projects.

### **B. Allocation of Administration Funds**

The FS Washington Office distributes administration funds to FS Regions/Area/IITF. Each FS Region/Area/IITF in consultation with the States requests these funds to meet their needs and the needs of the participating states in their Region/Area/IITF. Administration funds are also used by the FS Washington Office to fund program management functions. Administration funds will be granted to States under the State grant option separately from project funds.

### **C. Allocation of AON Preparation Funds**

The FS Washington Office distributes AON preparation funds to the States by way of FS Regions/Area/IITF. These funds are requested by FS Regions/Area/IITF to meet the needs of their States to develop new AONs or amendments.

## **XII. Redirection and Reprogramming of Funds**

Due to the nature of real estate transactions, FLP projects may change in scope, cost or fail completely. These changes can result in unspent or excess funds for some projects while others may need additional funding to bring them to completion. In order to maximize the efficient and effective use of FLP project funding, the FS will either redirect or request reprogramming of funds. Redirection is a shift of funds from one congressionally approved project to one or more other congressionally approved project(s). Reprogramming is a shift of funds that exceeds an increase or decrease of 10% per project not to exceed \$500,000 to an existing project, or shifting of any amount of funds to a project not previously approved by Congress.

### **Regional Redirection Process**

FS Regions/Area/IITF may redirect up to an increase or decrease of 10% per project not to exceed \$200,000 of project funds that are excess or unspent from one project to one or more other Congressionally approved project(s) within the FS Region/Area/IITF which is underfunded and where there is a substantiated need (e.g. loss of other funding sources, appraisal documenting increased cost, etc.) to bring the project to completion. Project funds over \$200,000, or those that cannot be redirected by the FS Region/Area/IITF, will be released for the national process. FS Regions/Area/IITF will notify the FS Washington Office before a redirection takes place and report these actions periodically. All funds from failed projects will be released for the national process.

### National Redirection Process

The FS Washington Office, through consultation with FS Regions/Area/IITF, may redirect up to an increase or decrease of 10% per project not to exceed \$500,000 of project funds that are excess or unspent from one project to one or more congressionally approved project(s) which is underfunded and where there is a substantiated need (e.g. loss of other funding sources, appraisal documenting increased cost, etc.) to bring the project to completion. In addition, when funds have not been spent or contractually obligated within two years of receipt of funds, they revert to the FS Washington Office via the appropriate FS Region/Area/IITF. The FS Washington Office will:

1. Assess the extent of unspent or returned funds on a periodic basis;
2. Facilitate selection and funding of underfunded projects not addressed by the regional process or between FS Regions/Area/IITF; and
3. Notify Appropriations Subcommittees of any redirection action taken by the FS FS Regions/Area/IITF or FS Washington Office.

### National Reprogramming Process

The FS Washington Office, through consultation with FS Regions/Area/IITF, may request reprogramming by the Appropriations Subcommittees of unspent or returned funds to a project that requires more than an increase or decrease of 10% per project not to exceed \$500,000 to complete. In addition, the FS Washington Office may request reprogramming by the Appropriations Subcommittees of unspent or returned funds to a project not previously approved by Congress. The FS Washington Office will:

1. Determine the funds available for reprogramming on a periodic basis.
2. Identify underfunded projects that cannot be addressed through the Regional Redirection Process and determine the priority for reprogramming.
3. Recommend reprogramming to fund projects from the National Project List next in sequence in priority ranking to the extent practicable.
4. Submit reprogramming requests to the Appropriations Subcommittees for approval.
5. Allocate funds to projects approved for reprogramming.

## **XIII. FLP Cost Share Requirements**

The CFAA directs that, to the extent practicable, the maximum Federal contribution for total program costs may not exceed 75 percent. To assure program-wide cost share goals are met, each project budget must include a minimum nonfederal contribution of 25 percent (See Appendix D for examples of cost share calculations). This nonfederal cost-share must meet Forest Legacy purposes. It may consist of: (1) the value of land, or interest in land, dedicated to the FLP that is not paid for by the Federal government; (2) nonfederal costs associated with program implementation; and (3) other nonfederal costs associated with a grant or other agreement that meets FLP purpose. The nonfederal cost-share must be documented, and in the case of a grant, must meet the timing, terms, and conditions of the grant. The cost-share can occur at any phase of the FLP including planning, developing future projects, acquisition, capital improvement, management, or administrative activities. When a grant is involved, the cost-share must occur within the life of a grant and meet all grant requirements. Federal requirements identify the grant period as beginning when the grant is formally awarded and ends after two years to ensure that the federal funds are spent promptly. However, a grant may

receive a maximum extension to five years. Allowable costs shall be determined in accordance with the 7 CFR 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and any amendments to this regulation (See Appendix C for list of applicable Office of Management and Budget (OMB) Circulars and other regulations).

Donations of land or interests in land must be documented to count as part of the nonfederal 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. The value of donations may be included as part of the nonfederal cost-share if all of the following are met:

1. The donation contributes to the objectives and priorities of the State FLP as set forth in the AON;
2. All or part of the tract being donated must be within the boundaries of an FLA, and may include National Park, National Forest, National Wildlife Refuge, or other Federal land boundary, or within the boundaries of an area designated through an analogous State program with goals compatible with the FLP and be within an FLA;
3. The donor documents their desire that value of the interests may be used as cost share for the FLP project;
4. 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 FLA was established;
5. The donee (holder of donated rights) is a unit of government or a non-profit 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;
6. 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;
7. The respective portion of the donation must not have been previously credited towards any Federal program's nonfederal cost share; and
8. The State lead agency approves the donation as contributing to the cost-share.

#### **XIV. Acquisition of Lands or Interests in Lands**

FLP acquisitions may be outright full fee purchases, or acquisition of development rights or other rights conveyed through a conservation easement. Except in the case of a full and complete donation of land or an interest in land, if any Federal funds are used in the acquisition of Forest Legacy tract the following shall apply:

1. Federal appraisal standards must be met, including appraisal review by a qualified Review Appraiser;
2. The landowner must be informed in writing of the market value and that sale of the

- property is strictly voluntary;
3. The landowner must be notified in writing that the property will NOT be purchased if negotiations do not result in amicable agreement;
  4. Federal payment to the landowner for lands or interests in lands is not more than the market value as determined by an appraisal meeting Federal appraisal standards;
  5. The title acquired must be free of encumbrances inconsistent with the purposes of the FLP. Title insurance may be secured for the full value of the encumbered property, but is not an alternative to an acceptable title; and
  6. If relocation is involved the requirements in the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970 (PL 91-646 or 42 U.S.C. 4601) must be followed. The FS will be advised in advance of any acquisition involving relocation.
  7. In the case of acquisition of interested in lands, the development of a Forest Stewardship Plan or multi-resource management plan that has been approved by the landowner and the State Forester or designee and Baseline Documentation Report shall be prepared prior to project closing (See Appendix J for sample content and references).

All FLP acquisitions of lands or interest in lands are perpetual and therefore run with the land. Although any remaining interests held by the landowner may be subsequently conveyed, future owners are still bound by the terms and conditions of the conservation easement. At the same time, future owners shall retain full control of the rights that are not acquired by the FLP, and shall be subject only to those restrictions that the present landowner has conveyed to the Federal, State, or local government.

Compatible nonforest land uses (cultivated farmland, pasture, grassland, shrubland, open water, and wetlands) are desirable land uses in many FLAs. FLP funds should not be used for any property not meeting the State's definition of forested land in the AON, unless there is a written plan scheduling reforestation or afforestation. Programs to conserve farms, ranches and similar land uses may be used in conjunction with the FLP to protect properties where there are mixed forest and compatible nonforest uses.

Conservation easements are required to contain language pertinent to the purpose of the FLP and a reversionary provision to ensure the conservation investment of FLP into the future (Example clause language are found in Appendix I). During the development of tract specific conservation easements, a determination will be made 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 pursuant to the purpose of the FLP without acquiring the mineral rights.

The FLP conservation easement holder (Federal, State or local government) is responsible to assure that baseline documentation contains all the information necessary to monitor, manage and enforce the easement. Where the conservation easement is a tax-deductible gift, and the owner retains rights to the property, the Internal Revenue Service (IRS) holds the donor responsible for providing sufficient baseline data "to establish the condition of the property at the time of the gift." (See Treas. Reg. §1.170A-14(g)(5)(i)). However, this does not eliminate the

FLP need for baseline documentation.

Baseline documentation describes or depicts a tract of land and its attributes on the day it becomes restricted by an easement. This documentation is required on all FLP tracts and is completed prior to project closing. Documentation of the property should include a map of the area drawn to scale showing all existing man-made improvements or incursions such as roads, buildings, fences or gravel pits; an aerial photograph of the property taken as close to the date the property is restricted as possible; and on-site photographs, especially of significant features. The above should be accompanied by narrative descriptions of tract attributes and other pertinent information.

States and landowners are encouraged to display the official FLP signs on the FLP property using the signs in accordance with Appendix K. The posting of FLP tracts helps promote public awareness, recognition and support for the program. Landowner permission should be secured before posting any signs. Costs associated with sign posting can be covered by FLP project or administration grants or States may use such expenses as FLP cost share. Signs should be inspected during the annual monitoring of the FLP tract and repaired when in poor condition.

FLP sign art and program logos may be used by FLP partners for items that contribute to the purpose of awareness (e.g. brochures, workshops, outreach efforts, posters, FLP information packets, web sites etc.)

## XV. Appraisal and Appraisal Review

The FLP policy on appraisal is that all FLP acquisition of land or interests in land using Federal funds must comply with Federal appraisal standards contained in the publication entitled “Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000,” as amended or updated. Appraisals and appraisal reviews may be conducted by any qualified appraiser meeting the minimum standards outlined in Appendix H.

The FLP will ensure high quality appraisal service and accountability to the program by:

- Annual planning and coordination of appraisal work to allow for efficient allocation of resources.
- Requiring checks and balances:
  - States will ensure that qualified appraisers trained and competent in appraisal, appraisal review and knowledgeable of Federal standards will be used. The State may use State, contract or Federal appraisal or review services to meet this requirement.
  - States or the FS will review contract appraiser qualifications as stated in Appendix H before they are employed to conduct a FLP project appraisal or review.
  - The appraiser and identified review appraiser will engage in an initial consultation before the project appraisal takes place. The review appraiser will develop project specific appraisal instructions for the appraiser as a result of this consultation.

- The FS will conduct spot checks of appraisal reviews to ensure quality and accuracy.
- Forest Legacy funds can only be used to purchase lands and interests in land after the appraisal review confirms that the appraisal meets the *Uniform Appraisal Standards for Federal Land Acquisitions*. It is recommended that an offer not be made until the appraisal review is approved.

## XVI. Conservation Easement Monitoring, Management, Record-Keeping & Enforcement

The governmental entity holding title to interests in land acquired under the FLP shall monitor and manage those interests in perpetuity. The holder may delegate or assign monitoring, management, and enforcement responsibilities over lands and interests in lands acquired under the FLP only to other Federal agencies or State or local government entities. Such delegation or assignment of responsibility shall be documented by a written agreement. The governmental entity responsible for monitoring, management and enforcement of the conservation easement may in turn delegate or assign management and monitoring authority to other parties, to include land trusts, conservation groups, and other governmental entities. Such delegation or assignment of authority shall be adequately documented and the FS shall be notified. The FS shall approve agreements involving any interests in lands held by the Federal Government prior to such delegation or assignment. Once interests in lands are acquired, the State lead agency, FS, and others as appropriate, may negotiate tract-specific Memorandums of Understanding (MOU) as necessary to specify management and monitoring responsibilities for the interests in lands.

Optimal management and monitoring of tracts in FLAs is based upon partnerships between landowners, private non-profit organizations owning or managing lands, and State and Federal officials. Land trusts and other private organizations will continue to manage and monitor their own easements and lands within designated FLAs, and while they may not manage government-owned interests in lands under the FLP, they may cooperate with or contract for monitoring and implement specific management activities. Management of federally owned interests in lands is reserved to the FS, but may be assigned to State or local governments, or another Federal agency through mutual agreement. Although delegable, enforcement actions for easements will generally be conducted by the easement holder, i.e., the State or the Federal Government.

Monitoring FLP conservation easements shall occur periodically, but not less than annually. Monitoring consists of visual inspection of the property, documented by a written report to explain the condition of the property at time of inspection. Any material departure from the baseline documentation report or Forest Stewardship Plan should be noted. The easement holder 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 (e.g. 30 days), if the breach is not corrected, enforcement action may be taken, including but not limited to, legal means. The unit of government holding the conservation easement has the initial responsibility to enforce the conservation easement. See Appendix G, Real Estate Record Keeping for suggestions on what information should be kept.

The State or easement holder shall promptly notify any future FLP tract owner of the FLP and the origin and requirements of the conservation easement.

The Forest Stewardship Plans covering the tract shall be reviewed periodically and updated as needed. If there is a change in land ownership, then the Forest Stewardship Plan needs to be reviewed, and updated as needed.

## **XVII. Landowner Participation**

Landowner participation in the program is voluntary and consists of two elements:

1. Conveyance of lands and interests in lands to achieve the purpose of the FLP;
2. Preparation and periodic updates of a Forest Stewardship Plan or a multi-resource management plan. The landowner and the State Forester or designee must approve the plan prior to signing the acquisition of the easement. The plan shall include provisions to meet land conservation objectives of the FLP. The plan shall be kept current and updated as needed. Modifications of the plan must be agreed to by the State lead agency. A plan is not needed if the lands are purchased in fee. (See Appendix F for sample content of a Forest Stewardship Plan)

Landowners may submit an application and property information (See Appendix E) to the State lead agency to enroll their land or interests in lands in the FLP according to the process described in the AON. All owners of eligible forestlands within the designated FLA, and meeting the minimum Eligibility Criteria or other application requirements described in the AON, are eligible to submit an application.

For a landowner to participate in the program, it is not required that their tracts be completely forested. (see definition of “Nonforest Uses” and “Reserved Areas”) However, priority will generally be given to tracts that are currently forested or are identified to be forested in the landowner Forest Stewardship Plan or multi-resource management plan.

The FLP respects the rights of private property holders. Under no circumstances shall the right of eminent domain be used for the unwilling “taking” of any private property rights. Traditional forest uses such as forest management activities, including timber management, and outdoor recreation opportunities are deemed consistent with purposes of the FLP and are encouraged on FLP tracts when consistent with the State’s AON and the conservation purposes for FLP tract acquisition.

The FLP adheres to language contained in Section 14 of the CFAA, Statement of Limitation: “This Act shall not authorize the Federal Government to regulate the use of private land or to deprive owners of land of their rights to property or to income from the sale of property, unless such property rights are voluntarily conveyed or limited by contract or other agreement. This Act does not diminish in any way the rights and responsibilities of the States and political subdivisions of States.” Purchase or donation of rights does not relieve landowners of regulations that would otherwise apply.

The FS has no jurisdiction to make tax determinations or render advice as to the tax implications of transactions. Since tax implications differ from person to person, landowners should be encouraged to seek independent counsel from local assessors, tax lawyers, or accountants.

### **XVIII. Land Trust Participation**

Land trusts are nonprofit organizations that protect land by working with landowners wishing to donate or sell fee title or conservation easements to maintain conservation values associated with the land. Land trusts can have an important role to play in the FLP. The following considerations apply to land transactions between the Federal Government/States and land trusts:

1. Land trusts cannot execute contracts for acquisition of interests in lands on behalf of the Federal /State Government. Land trusts may work as intermediaries for eventual Federal/State acquisition, but without an accepted land purchase option and contract with the FS there is no guarantee of Federal acquisition. No pass-through transactions shall be done without prior consultation with the FS/State.
2. With approval of the State lead agency, the FS, the land trust or the donating landowner, lands and interests in lands acquired by land trusts (pursuant to Final Guidelines Part I, Section XIII) may be counted toward the nonfederal cost-share contribution, provided that the interests in lands permanently contribute to the FLP.
3. If a land trust proposes a pass-through transaction to the FLP it must assure that terms and conditions in the deed or conservation easement are reviewed and approved in advance by the State lead agency and/or the FS.
4. The monitoring of easements within FLAs may be performed by land trusts in accordance with the umbrella MOU for the FLP in that State and individual MOUs for specific tracts established between the State and the land trust organization.
5. Other appropriate and beneficial roles of land trusts in relation to the FLP may include: participation on the SFSCC; recruitment and facilitation of FLP projects; buyer of tracts or easements of proposed, but unfunded FLP projects; facilitators of local FLP efforts; and performing tract monitoring and management activities.

## PART 2 - STATE GRANT PROGRAM

The State lead agency elects the State grant option of the FLP, in writing, to the appropriate FS Region/Area/IITF.

When a State elects the State grant option, all FLP acquisitions shall be transacted by the State with title vested in the State or a unit of State or local government. There are two exceptions:

1. Donations where the donor may wish to make a donation to a land trust, local, or Federal Government and the donee agrees to accept the donation, and to manage the lands or interests in lands in perpetuity for FLP purposes; and
2. At the request of the State and at the discretion of the FS, the FS may acquire individual tracts or multiple tracts within a specified FLA, with title vested in the U.S. in accordance with Part 3 of these guidelines.

### I. Grants

If a State elects the optional State grant option, the FS will provide a Federal grant to the State to carry out the FLP, including the acquisition by the State of lands and interests in lands. Grants must be consistent with the uniform administrative requirements established in 7 CFR 3016. States will generally be reimbursed for costs incurred with cash advances limited to the minimum amounts needed and timed to be in accord only with the actual, immediate cash requirements of the State in carrying out the FLP. The timing and amount of cash advances shall be as close as is administratively feasible to the actual cash outlay by the State for direct program costs and the proportionate share of any allowable indirect costs.

#### A. Conditions of the Grant

1. States must submit annual performance and financial status reports. A final performance report and financial status report are required prior to close out of the grant.
2. Funds appropriated for the FLP shall not be included in consolidated-payment grants made under authority of Section 12 of the CFAA.
3. The State shall maintain current and complete financial records in accordance with requirements contained in the latest Federal Aid Manual and OMB Circular (See Appendix C).

#### B. Eligible Activities

The following activities are eligible uses of funds granted to States for the FLP; however, in most cases costs incurred prior to issuance of the grant cannot be reimbursed:

1. Purchase of lands or interests in lands from willing sellers for inclusion in the FLP;
2. Facilitation of donations of lands or interests in lands to a qualified and willing donee for FLP purposes;
3. Program administration expenses limited to indirect costs and direct acquisition related expenses for lands and interests in lands acquired under Forest Legacy authority;
4. Establishment and documentation of baseline conditions and development of a Forest Stewardship Plan for a conservation easement; and

5. AON Planning and amendment.

The following uses of Forest Legacy funds are not allowed as part of a State grant:

1. Management of acquired lands or interests in lands including, monitoring of conservation easements,
2. Enforcement actions, and
3. Payment for appraisals of donated property when the donation represents the full and total value.

C. Availability of Funds

Project funds for any fiscal year shall be available to the State for two years from the time they are obligated in a FS grant to the State in order to insure that Federal funds are spent promptly to acquire FLP projects. However, a grant may have a maximum duration of five (5) years to allow for nonfederal cost sharing to occur. During the 5-year life of the grant, it can be amended annually, as needed, and funds from a new fiscal year added to the grant, consistent with the requirement that the funds be expended within two years of the time of obligation. In no case can funds be obligated or expended beyond the 5-year life of the grant.

II. Acquisition of Lands and Interests in Lands by States

All Forest Legacy acquisitions including the acquisition of lands or interests in land shall be made in accordance with Federal appraisal and acquisition standards and procedures. The interests in land acquired for Forest Legacy shall be adequate for Forest Legacy purposes and be perpetual. Title to such lands or interests in lands will be vested in the State or unit of State government. These lands or interests in lands will be managed and administered for goals consistent with Forest Legacy conservation purposes by State agencies or their assigns. The State agencies are responsible for all monitoring and management of conservation easements and management of fee simple properties.

Lands and interests in land located within a FLA and simultaneously within other Federal boundaries (e.g. national forest, national park, or national wildlife refuge) are eligible for the FLP provided that the responsible Federal agency concurs with the FLP State acquisition. If a State has passed legislation that extinguishes claims to or restrictions on real property, the State shall use all available authorities, including that of acting as an agent of the U.S., to achieve the purposes of section 7(K)(2) of the CFAA.

III. Reversion of Funds for Forest Legacy Inconsistency

In the event it is determined, by the State lead agency, that it is no longer desirable to hold lands or interests in lands acquired with Federal funding and those lands are conveyed, exchanged, or otherwise disposed of, after providing notice to the FS, the State shall:

1. Reimburse the FS for the current market value in proportion to the original Federal investment; (said reimbursements to be used to further the purposes of the FLP); or

2. Exchange for other FLP eligible lands or interests in lands of at least equal market value and of reasonably equivalent location, with public purposes that equal or exceed those of the disposed tract, with FS approval.

Items 1 and 2 identified above must be included in deeds or conservation easements of all FLP tracts as well as in the FS grant to the State. Appendix I includes suggested language for conservation easements and deeds.

## PART 3 - FEDERAL ACQUISITION PROGRAM GUIDELINES

### I. Federal Acquisition Process

In the furtherance of the purposes of the FLP, the State lead agency with involvement of the SFSCC and the FS will review property owner applications, prioritize tracts, obtain State approval, and submit properties to the appropriate FS Region/Area/IITF for funding. Upon approval for funding, the FS will proceed to acquire from willing sellers conservation easements and/or other interests in land including fee acquisition.

Federal Acquisition Procedures must be followed when Federal funds are used to complete an acquisition of land or interests in land using FLP authority. They are:

1. Federal appraisal standards must be met;
2. The landowner must be informed of the market value and that sale of the property is strictly voluntary;
3. The landowner must be notified in writing that the property will NOT be purchased if negotiations do not result in an amicable agreement;
4. Federal payment to the landowner for lands or interests in lands is not more than the market value determined under #1;
5. Assure title is free and unencumbered relative to the purposes of the FLP; and
6. If relocation is involved the requirements in PL 91-646 (42 U.S.C. 4601) must be followed and the FS must advise the landowner prior to the acquisition.

Certain lands are not eligible for the Federal ownership 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 or interests in lands located within National Forests, National Parks, National Wildlife Refuges, or other Federal Government boundaries. Proximity to Federal lands or the inclusion of Federal lands within a proposed FLA does not disqualify an area for program eligibility.

Federal laws governing public lands do not apply to private property rights not acquired by the Federal Government from willing private landowners. Interests in lands retained by private landowners, not conveyed to the Federal Government under the FLP, are subject to the same requirements of the Endangered Species Act (ESA) that existed prior to their participation in the FLP. Conveyance of interests in lands to the Federal Government neither enhances nor diminishes the landowner's responsibility under the ESA. Any interests in lands acquired by the Federal Government under the FLP shall be subject to the same requirements of the ESA as are other Federal lands.

### II. Memorandum of Understanding (MOU) for Coordination of the FLP

An MOU will be used to coordinate the FLP where Federal acquisition option resulting in Federal ownership of FLP acquisitions occurs. The MOU will define and facilitate partnerships between the State lead agency, FS, and other participating entities in implementing the program, acquiring interests in lands, and sharing the costs of the program. The MOU shall determine how costs are shared between parties, including administrative, management,

monitoring, and capital improvement expenses. The terms of a MOU will determine which party is responsible for costs incurred following the project's five-year cost-share write off period.

If individual Forest Legacy tract-MOUs are needed, they become an addendum to the State level "umbrella" MOU. The umbrella MOU between the State lead agency and the FS shall be developed following the Secretary's approval of the State's AON and the establishment of the State's FLP.

The FS/State MOU is for the purpose of specifying roles and responsibilities for implementing the program, and may address the following items:

1. Costs and Funding:
  - a. Identify direct and indirect costs expected to be incurred in establishing the FLP, and acquiring and administering interests in lands during the first five years of the program. Revise or renew these cost estimates as appropriate.
  - b. Identify and propose sources of cost-share matches.
2. Planning:
  - a. Document the amount of work required to complete the AON and identification of FLAs.
  - b. Define a process for revising existing landowner Forest Stewardship Plans, or multi-resource forest management plans.
  - c. Identify how specific tract acquisition needs and priorities shall be established by the State.
3. Acquisition:
  - a. Identify who is responsible for title work, appraisals, surveys, and similar pre-acquisition work.
  - b. Define a process for determining the value of donated interests in lands.
4. Management:
  - a. Define responsibilities for management of interests in lands acquired or dedicated to the program.
  - b. Identify possible activities needed to enhance, restore, or maintain resources to meet the intent of the program and general responsibilities in carrying out such activities.
5. Administration:
  - a. Estimate the staff-work required to implement the Program.
  - b. Define responsibilities for processing applications to the FLP.
  - c. Establish procedures for monitoring and enforcement the terms of reserved interest deeds and easements and identify who will be responsible.
  - d. Identify responsibilities for periodic reports summarizing the achievement of FLP goals in the State.

### **III. Payment in Lieu of Taxes (PILT)**

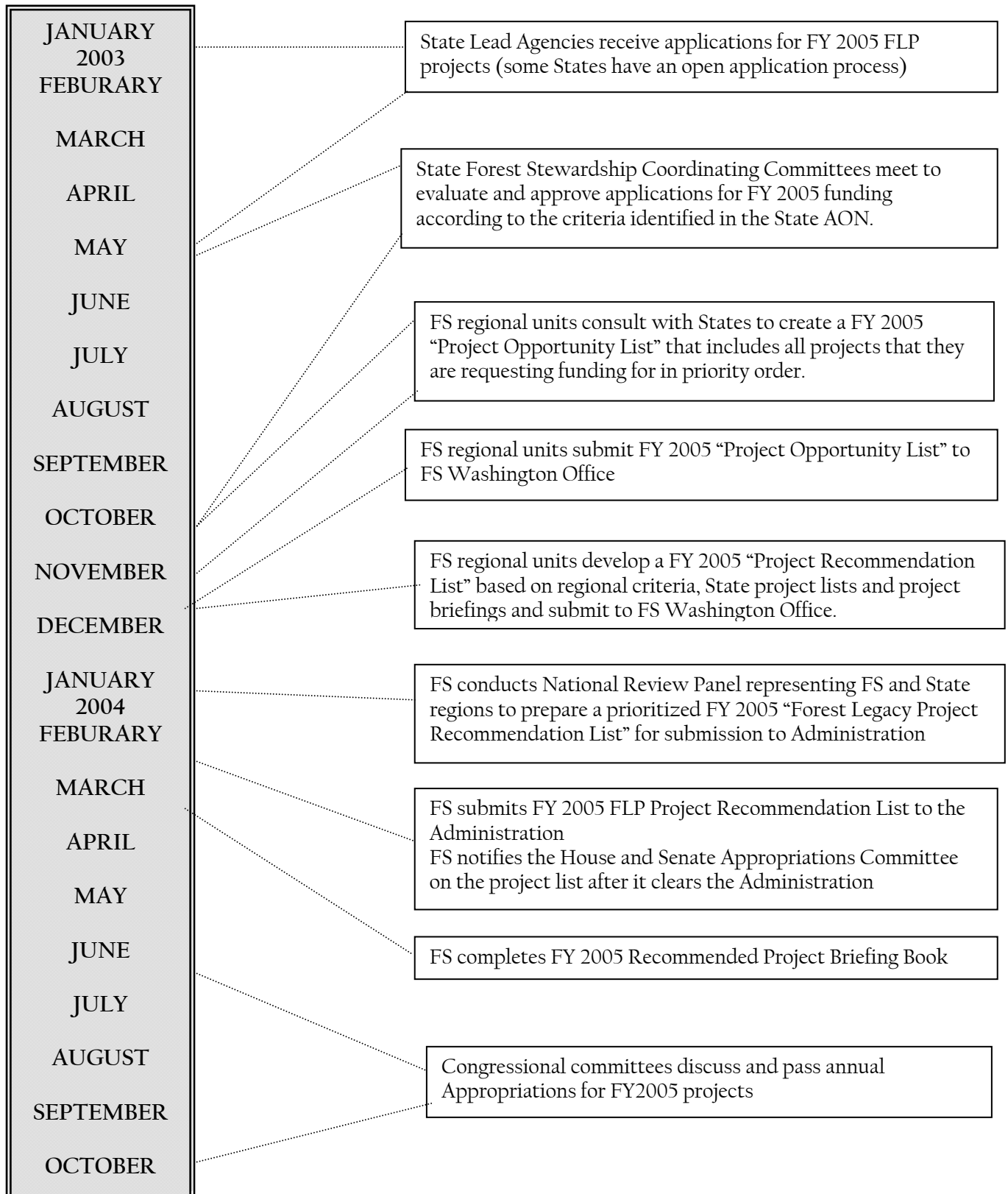
Where the Federal Government under the FLP acquires lands in fee, the Federal Government will pay PILT to the local taxing authority. No PILT will be paid on conservation easements.

#### IV. Transition to State Grant Option Program

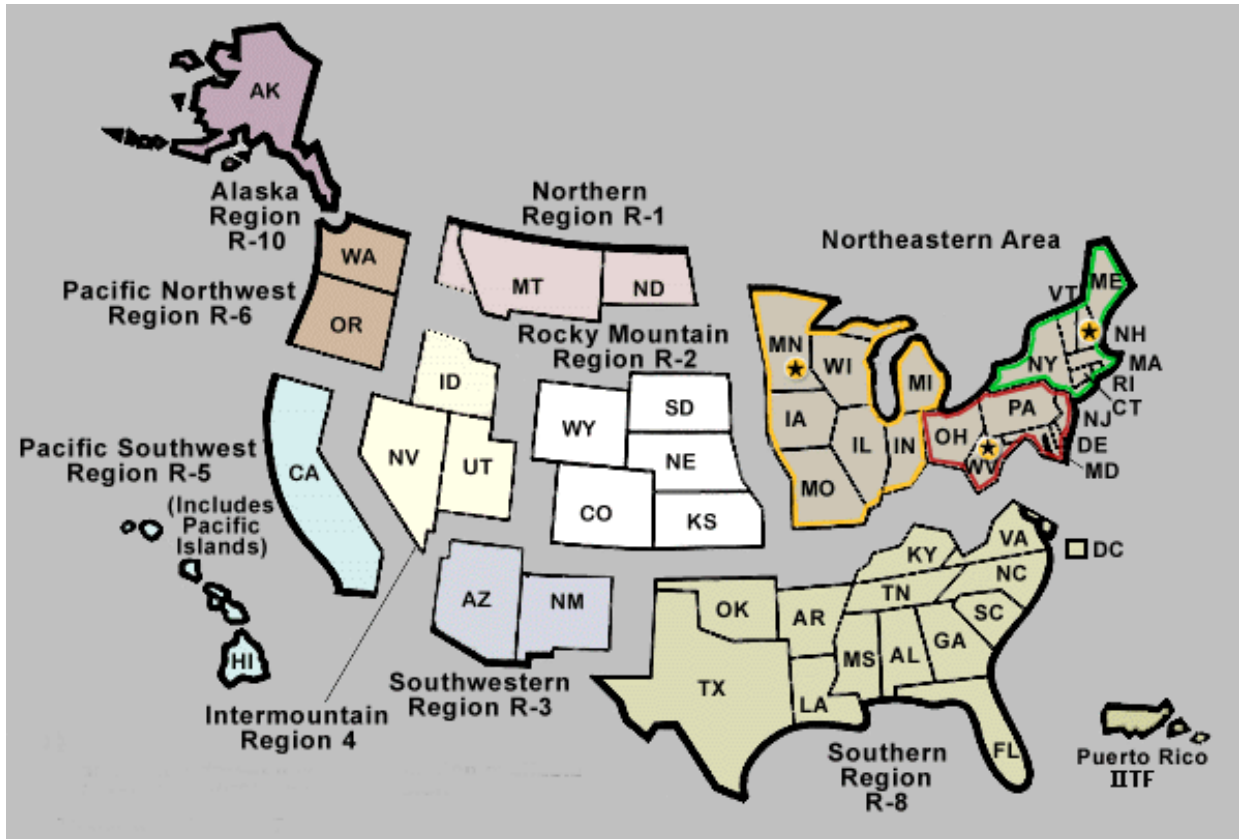
If a State elects the State Grant Option, and there are active cases being pursued by the FS, all parties (FS, State, and landowner) may agree to transfer the case to the State. If agreement to transfer is reached, then the value of the lands or interests in lands comprising the project may be transferred to the State by a FS grant. To facilitate projects transferred to the State, the FS 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 FS.

## APPENDIX A- Example of a Project Selection Calendar

This flowchart outlines the basic FLP project selection process.



APPENDIX B- Map of the Forest Service Regions/Area/IITF



National Association of State Foresters' (NASF) Geographic Regions:

North: All States within the Forest Service's Northeastern Area.

South: All States within the Forest Service's Southern Region (R-8) and International Institute of Tropical Forestry (IITF).

West: All States within the Forest Service's Northern (R-1); Rocky Mountain (R-2); Southwestern (R-3); Intermountain (R-4); Pacific Southwest (R-5); Pacific Northwest (R-6); and Alaska (R-10) Regions.

## APPENDIX C- Grant and Cost Share Requirements

### Grant Regulations

All Forest Legacy Program (FLP) grants must 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. If FLP funds are granted to an organization other than the State, other circulars and regulations apply.

1. OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments"
2. OMB Circular A-87, "Cost Principles for State, Local, and Tribal Governments" as implemented by Departmental Regulation 7 CFR 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" as implemented by Departmental Regulation 7 CFR 3050, "Audits of State and Local Governments"
4. OMB Circular A-89, "Catalog of Federal Domestic Assistance"
5. 7 CFR 3016, Uniform Administrative requirements for Grants and Cooperative Agreements to State and Local Governments

### Cost Share Requirements

All FLP grants must require a 25 percent non-federal cost share, with the Forest Service funds contributing no more than 75 percent of the project costs. The cost share can be cash, in-kind services, and full or partial donations of lands and interest in lands. All cost share needs to be consistent with applicable cost principles and grant regulations, identified above. In addition, State FLP files must contain sufficient documentation substantiating the source and monetary value of the grant cost share.

Each grantee is responsible for administering the grant consistent with the OMB circulars and CFRs. In addition, the Regions/Area/IITF will provide oversight to ensure that sufficient cost share is obtained and documented. Below is a summary of the existing cost share guidance.

**Costs Principles-** OMB Circular A-87 (or 2 CFR Part 225) (*Cost Principles for State, Local, and Indian Tribal Governments*) establishes principles and standards for determining allowable costs for Federal grants with State and local governments and federally recognized Indian tribal governments. 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. This circular needs be used by grantees to assess allowable costs (including all types of cost share), how to document cost share, and how to determine value of cost share.

The circular states that it was developed based on the fundamental premise that:

- "(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.*
- (2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.*

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.”

**Administrative Requirements- 7 CFR 3016 (Uniform Administrative requirements for Grants and Cooperative Agreements to State and Local Governments)** establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local, and Indian tribal governments. Subpart C specifies the financial requirements for grantees. The following references address grant record keeping and cost share requirements:

§ 3016.24 (b)(6) “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 subgrantees or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived.”

§ 3016.24 (g) Appraisal of real property (within Matching or Cost share section). In some cases under paragraph (d), (e), and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that value or rate be certified by the grantee.”

§ 3016.40(a) Monitoring by grantees. Grantees are responsible for managing the day to day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant 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.

For donated land or interest in land to be used as cost share, the grantee will need to determine the value of the donation. The grantee should engage a certified general appraiser to assist in determining value. The grantee may use an existing appraisal, a new appraisal, or another documented analysis to determine value. If an appraisal is used, then the State will verify that the appraiser was State licensed or State certified. All documentation determining the value of donated land or interest in land will be filed in the State project files and provided to the Region/Area/IITF FLP manager.

**Federal Financial Report (SF 425)-** The grantee is required to complete the Federal Financial Report (SF 425) both periodically throughout the grant period and a final at the completion of the grant. 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 program cost share of 25 percent. However, other FLP project documents and information in the Forest Legacy Information System (FLIS) should describe additional match provided for the project.

**Certification of Cost Share-** 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. For FLP grants, these signatures are sufficient for

certifying that the grantee has provided the required 25 percent cost share, including from donated tracts.

In addition, the Federal Financial Report (SF 425) is required to be submitted by the grantee upon completion of the grant, and it specifies the amount of cost share provided under the grant. An “Authorized Certifying Official” must sign the SF 425, certifying that the information is accurate. This signature also certifies that the grantee has provided sufficient cost share, which has been verified and documented.

The Request for Reimbursement or Advancement form (SF 270) requires that the grantee provide both federal and non-federal share of the total project cost. A “Signature of Authorized Certifying Official” 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.”*

## APPENDIX D- Examples of Cost Share Calculations

### Equation for Calculating Cost Share Requirement

(Federal FLP Share) X (0.333) = the minimum Non-Federal Contribution

OR

(Total Project Costs) X (0.75) = the maximum Federal Contribution

### Principals to Guide Calculating the Cost-Share Requirements

- To calculate the cost share requirement, the Program Manager should use the Federal FLP contribution, and not the total project costs.
- The cost share requirement should be at least 33.3% of the total Federal FLP contribution towards the project, which will equal at least 25% of the total FLP project (Federal FLP contribution plus cost share).
- The Federal contribution (Forest Service's FLP plus all other Federal contributions) cannot exceed 75% 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- The FLP is going protect Jane Smith's 3,000 acres tract. The total cost of protecting that land is \$1 million.

<i>Total Project Costs</i>	<i>Federal FLP Contribution</i>	<i>Non-Federal FLP Contribution</i>	<i>Other Federal Contribution</i>	<i>Other non-Federal Contribution</i>
\$1,000,000	\$750,000	\$250,000	\$0	\$0

- Federal contribution cannot exceed \$750,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$250,000; therefore, FLP funds are adequately cost shared.

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.

<i>Total Project Costs</i>	<i>Federal FLP Contribution</i>	<i>Non-Federal FLP Contribution</i>	<i>Other Federal Contribution</i>	<i>Other non-Federal Contribution</i>
\$4,000,000	\$1,000,000	\$333,000	\$0	\$2,667,000

- Federal contribution cannot exceed \$3,000,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$333,000; therefore, FLP funds are adequately cost shared.

Example 3- ABC Tree Company is planning to conserve 8,300 acres of land. Both the Forest Service's FLP and the U.S. Fish and Wildlife Service (FWS) are contributing funds toward the project. Non-Federal money has been secured to cover the non-Federal cost share requirements for the FLP and FWS requirements, as well as to pay for additional project costs.

<i>Total Project Costs</i>	<i>Federal FLP Contribution</i>	<i>Non-Federal FLP Contribution</i>	<i>Other Federal Contribution</i>	<i>Other non-Federal Contribution</i>
\$4,000,000	\$1,000,000	\$333,000	\$1,000,000	\$1,667,000

- Federal contribution cannot exceed \$3,000,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$333,000; therefore, FLP funds are adequately cost shared.
- FLP cost share component cannot be the same as the FWS cost share component.

## APPENDIX E- Information to Facilitate Landowner Participation

Landowners who wish to participate in the program may be asked to provide the following information.

1. Name, address and phone number of applicant landowner.
2. All other owners of record for this tract, and their addresses.
3. Name, address and phone number of authorized agent representing landowner(s) if applicable.
4. Location of property.
5. If the landowner intends to reserve rights to forestry uses or other resource management activities, a copy or reference to the State approved landowner Forest Stewardship Plan or multi-resource management plan.
6. List of the significant scenic, natural, recreational, wildlife, timber and other resource values contained on the property.
7. Identification of all dams, dumps or waste disposal sites on the property.
8. Signed statement giving the FS and State lead agency permission to enter the property for review and appraisal purposes.
9. Legal description.
10. List any encumbrances or liens existing on the property including, but not limited to contracts, leases, or outstanding rights not of record.
11. Copy of plat or survey map of the property, if existing. If only a portion of the property is being offered, identify it on a plat showing the portion offered in the context of the entire tract.
12. Tract acreage and total number of acres of forests and cleared/open land.
13. List of existing permanent improvements on the tract, including houses, barns, lakes, ponds, dams, wells, roads, and other structures, and total number of acres occupied by improvements.

## APPENDIX F- Sample Content of a Forest Stewardship Plan

Below is information from the Forest Stewardship Program's *National Standards and Guidelines*. Please also refer to the Forest Stewardship Program's *Planning for Forest Stewardship: A Desk Guide* as well as States' Statewide Forest Stewardship Plans for additional information on Forest Stewardship Plans.

Landowner Forest Stewardship Plans must:

- be prepared or verified, as meeting the minimum standards of a forest stewardship plan, by a professional resource manager.
- identify and describe actions to protect, manage, maintain and enhance relevant resources listed in the law (soil, water, range, aesthetic quality, recreation, timber, water, and fish and wildlife) in a manner compatible with landowner objectives.
- be approved by the State Forester or a representative of the State Forester.
- involve the landowner in the plan development by setting clear objectives and should understand clearly the completed plan.

A well prepared plan will:

- Clearly state landowner objectives.
- Have a cover page.
- Provide for authorship and/or signature lines within the document.

The plan preparer should consider and evaluate resource elements present and include a brief description of those that are applicable and their importance to the ownership. Resource elements to be considered are:

- Soil Interpretations
- Water
- Range
- Aesthetic Quality
- Recreation
- Timber
- Fish
- Wildlife
- Forest Health
- Archeological, Cultural and Historical Sites
- Wetlands
- Threatened and Endangered Species

Management recommendations, or where appropriate, alternative strategies should be provided for those resource elements described. Prescriptions or treatments should be integrated and stand or site specific. An ownership map drawn to scale, or photo, to include vegetation cover types, stream and pond location with a legend will enable the landowner to implement the plan.

Landowners' understanding may be improved by including activity summaries and appendices. Appendices might include:

- Description of assistance available and incentive programs
- Educational materials
- A glossary of terms
- An explanation of applicable Federal, State and /or county regulatory programs, especially as they apply to:
  - Archeological, cultural and historical sites.
  - Wetlands.
  - Threatened and Endangered Species.

These last three items are covered by legislation other than the Cooperative Forestry Assistance Act of 1978, as amended by title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2101, et seq.), but must be considered for Federally funded programs.

The professional resource manager should discuss the Forest Stewardship Plan with the landowner, following completion, to assure understanding.

## APPENDIX G- Forest Legacy Program Record Keeping

### A. PROJECT

#### U.S. Forest Service

The following specifies what documents are required to be held in perpetuity for the Forest Legacy Program (FLP) at the federal level -- both hard copy and electronic copy -- for each closed tract. These documents are separated into two categories: (1) Mandatory- documents that are mandatory for the Forest Service to obtain, and (2) Recommended- documents that are good for the Forest Service to obtain, but existing guidance does not require the Forest Service to obtain. This document is consistent with the Forest Service's Interim Directive 6209.II-2010-4 issued on October 19, 2010, which requires that all records pertaining to the use of Federal funds to acquire lands or interest in land under FLP must be filed under 3360. Once the grant has been finalized, the grant documents should merge with FLP documents to make the file complete. Table I indicates which documents are required or recommended for conservation easements, fee purchase, and donated fee tracts and easements. The federal program manager should require the State to send copies of documents 2 -10 before closing out the grant.

#### **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. Project narrative
  - d. Final Performance Progress Report
  - e. SF 425 Federal Financial Form, signed by authorizing official, as appropriate
  - f. FS 6500-235, De-Obligation/Close-out Request Form
  - g. All amendments, modifications and invoices
  - h. Proof of cost share/match, including documentation of cost share (including value of cost share tract).
2. Copy of recorded acquired interest in land (whether CE or fee deed) 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 Forest Stewardship Plan or Multi-Resource Management Plan or equivalent (Not required if Fee Purchase)
6. Appraisal Review Report indicating appraisal conformance to Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book).
7. Amicable Agreement letter or documentation that the landowner has been notified of the appraised value and is knowledgeable that FLP is a voluntary program.
8. Cover and signature page(s) of Baseline Documentation. (Not required if Fee Purchase)
9. GIS shapefiles of the boundaries of the CE or fee acquisition (this file will be stored by the Forest Service, but it is also recommended to keep a copy in the electronic project file).

**Recommended**

- 10. Settlement/closing statement, including signatures, or other proof of payment, e.g. copy of check or Electronic Funds Transfer.
- 11. Maps of FLP tracts of CE or FEE acquisition and cost share tracts.
- 12. Documents of publicly crediting USFS as a source of funding for the project through a publicly available periodical, or photographic proof of the posting of a FLP sign.

Table 1. Forest Service Mandatory and Recommended Documentation for FLP Projects

Documents	Conservation Easements	Fee Purchase	Donated Fee Tracts/Easements
Grant Documents (1)	x	x	x
Copy of Recorded Acquired Interest in Land (2)	x	x	x
Final Title Insurance Policy or Assurance of Title(3)	x	x	
Minerals Determination (4)	x	x	** x
Management Plan signature page etc. (5)	x		
Appraisal Review Report (6)	x	x	
Amicable Agreement Letter (7)	x	x	** x
Signature Page of Baseline Documentation, etc. (8)	x		** x
GIS shapefiles of boundaries, etc. (9)	x	x	x
Copy of Check or EFT Statement (10)	x	x	
Maps of Tracts, etc. ** (11)	x	x	** x
Evidence of Publicly Crediting USFS ** (12)	x	x	

\*\* Recommended

**State**

The following specifies what documents are required to be held in perpetuity at the State level -- both hard copy and electronic copy -- for each closed tract. These documents are separated into two categories: (1) Mandatory- documents that are mandatory for the State to obtain, and (2) Recommended- documents that are good for the State to obtain, but existing guidance does not require the State to obtain. All final documents should be held in perpetuity by the State in a safe location. See Table 2 below. B, G, & I not required if Fee Purchase.

**Mandatory**

- A. Current landowner contact information (name, address, phone, email).
- B. Original signed baseline document and all updates. (Not required if Fee Purchase)
- C. Recorded acquired interest in land (whether CE or fee deed) with signatures and copy of deed for each subsequent landowner.
- D. Final title insurance policy or letter from the State assuring title.

- E. Final appraisal, with appraisal instructions, and appraisal review report indicating appraisal conformance to Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book).
- F. Certification of appraiser and non-federal review appraiser, in accordance with Appendix H.
- G. Current Forest Stewardship Plan or Multi-Resource Management Plan or equivalent (Not required if Fee Purchase)
- H. Settlement/Closing statement, including signatures, or other proof of payment, e.g. copy of check or Electronic Funds Transfer.
- I. Monitoring records/history. (Not required for Fee)
- J. Amicable Agreement letter or documentation that the landowner has been notified of the appraised value and is knowledgeable that FLP is a voluntary program.
- K. Proof of cost share/match, including documentation of cost share (including value of cost share tract).
- L. For donated tracts, letter or other form of documentation of the landowner's willingness to use property as cost share.

**Recommended**

- M. Copies of any leases, covenants, or other restrictions on the use of the property.
- N. Minerals determination (if mineral rights are severed).
- O. Copy of Grant documents.
- P. Environmental site inspection/assessment documentation including hazardous materials review.
- Q. Documentation of location of transaction/negotiation summary and history
  - 1. Landowner inspection consent agreement (Some States may not enter one)
  - 2. Option agreement (Some States may not enter one)
  - 3. Notification of county or local government (If required)
  - 4. Maps of FLP tracts of CE or FEE acquisition and cost share tracts.

Table 2. Mandatory and Recommended Documentation for States

Document	Conservation Easements	Fee Purchase	Donated Fee Tracts/Easements
Current landowner info, etc. (A)	x	x	x
Original and Current Baseline Documentation (B)	x		** x
Recorded Acquired Interest in Land, etc ( C)	x	x	x
Title Insurance Policy (D)	x	x	
Final Appraisal, appraisal instructions, and Appraisal Review Report (E)			
Certification of appraiser qualifications (F)	x	x	
Current Forest Stewardship Plan or equivalent plan, etc. (G)	x	x	

Settlement/Closing statement, etc. (H)	x		
Monitoring Records (I)	x	x	
Amicable Agreement Letter (J)	x	x	
Proof of value for all cost share match, etc. (K)	x		x
Landowners willingness to use property as cost share (L)			**x
Copies of leases, covenants, etc. ** (M)	x	x	x
Minerals determination (N)	x	x	**x
Grant documents required by the State ** (O)	x	x	
Environmental Site Inspection, etc. ** (P)	x	x	x
Documentation of Location of transaction , etc. ** (Q)	x	x	
Landowner Inspection Consent Agreement ** (Q1)	x	x	
Option Agreement ** (Q2)	x		
Notification of County, etc. ** (Q3)	x	x	
Maps of Tracts, etc. ** (Q4)	x	x	

\*\* Recommended

## B. PROGRAM

The following mandatory program documents are required to be held in perpetuity at the federal level -- both hard copy and electronic copy. In addition, recommended documents, if kept, are required to be held in perpetuity. These records should be filed under 3360. See table 3 below.

### Federal

#### **Mandatory**

1. Annual State monitoring report summary for all State CEs. (Not required if Fee Purchase)
2. State and regional program reviews
3. Quality Assurance Inspections and QAI follow-up reports
4. State Forest Action Plans, including Assessment of Needs incorporated by reference.

#### **Recommended**

5. Tract monitoring plan or copy of established State policy for monitoring CEs (Not required if Fee Purchase)
6. Statement of Assurance identifying the State's safe location for FLP records.

7. Program applicable State policies, including enforcement policy, monitoring policy, and record keeping policies.

## State

### **Mandatory**

1. Annual State monitoring report summary for all State CEs. (Not required if Fee Purchase)
2. State program reviews
3. Quality Assurance Inspections and QAI follow-up reports
4. State forest action plans, including Assessment of Needs incorporated by reference.
5. Program applicable State policies, including enforcement policy, monitoring policy, and record keeping policies.

### **Recommended**

These items are recommended for States to consider adding to their records to assist with succession planning and continuity of the FLP in their State.

1. Document the State's policy on FLP, which may include but not limited to, FLP promotions and annual solicitation for new FLP projects, and outreach efforts
2. Action plans from Program Reviews and QAIs and
3. Documentation of Stewardship meetings

To ensure the documents are in a "safe location" and will be held in perpetuity, we recommend that States follow the industry standards as described in 9G of the Land Trust Standards and Practices found at [www.landtrustaccreditation.org](http://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
- For any electronically stored documents, develop systems to ensure the data is updated periodically so the documents can be accessed using current technology.

## APPENDIX H- Required Qualifications of an Appraiser or Review Appraiser

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

1. a Federal land acquisition agency staff appraiser who
  - a. is certified as a general appraiser in compliance with OMB Bulletin 92-06, and
  - b. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)*\* approved for appraiser continuing education credit in the State where the appraiser is certified, or
2. a nonfederal staff or fee appraiser who
  - a. 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, and
  - b. has, within the past 10 years, completed at least the minimum classroom hours of non-duplicative education prescribed for the certified general real property appraiser classification by the Appraisal Standards Board of The Appraisal Foundation, and
  - c. has completed at least 12 self-contained or summary appraisal reports of properties similar in scope and complexity to the appraised property in the preceding three years, and
  - d. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions* approved for appraiser continuing education credit in the state where the appraiser is certified.

The qualified appraiser shall prepare an appraisal report in compliance with the *Uniform Appraisal Standards for Federal Land Acquisitions* and supplemental written appraisal instructions issued by the client. Federal land acquisition agencies are the member agencies of the Interagency Land Acquisition Conference.

B. Review Appraiser- In order to be a qualified review appraiser for purposes of FLP appraisals, an individual must be:

1. a Federal land acquisition agency staff appraiser who
  - a. is certified as a general appraiser in compliance with OMB Bulletin 92-06, and
  - b. holds specific delegated authority to review and approve or recommend appraisals for agency use, and
  - c. has completed training in application of the December 2000 edition of UASFLA\* approved for appraiser continuing education credit in the State where the reviewer is certified, or
2. a nonfederal staff or fee appraiser who
  - a. 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, and

- b. has, within the past 10 years, completed at least the minimum classroom hours of non-duplicative education prescribed for the certified general real property appraiser classification by the Appraisal Standards Board of The Appraisal Foundation and at least 32 classroom hours of approved training in appraisal review, or otherwise demonstrates competency in appraisal review in compliance with the Competency Rule of the *Uniform Standards of Professional Appraisal Practice (USPAP)*, and
- c. has completed at least 12 self-contained or summary appraisal reports of properties similar to the appraised property in the preceding three years or at least 12 technical appraisal review reports for appraisal reports of properties similar in scope and complexity to the appraised property in the preceding three years, and
- d. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions* approved for appraiser continuing education credit in the state where the reviewer is certified.

The qualified review appraiser shall prepare a technical appraisal review report that includes a determination of whether the appraisal report under review complies with the *Uniform Appraisal Standards for Federal Land Acquisitions*.

Federal land acquisition agencies are the member agencies of the Interagency Land Acquisition Conference.

\*The seminar, *Federal Land Exchanges and Acquisitions: Appraisal Issues and Applications*, offered by the American Society of Farm Managers and Rural Appraisers and the Appraisal Institute is the only acceptable substitute for UASFLA training.

## APPENDIX I- Requirements and Suggestions for Conservation Easements and Deeds

The Purpose and Authority and Reversion clauses are required in all FLP easements and deeds. Below are examples of language that States have used to meet that requirement:

### A. Purpose and Authority Clause

#### Example 1:

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 \_\_\_\_, which consists of reports, maps, photographs, and other documentation that the parties agree to provide.

This Easement acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, as amended by section 1217 of the Food, Agricultural, Conservation and Trade Act of 1990 (104 Stat. 3528; 16 U.S.C. Section 2103c).

#### Example 2:

The purpose of this 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 U.S.C. – 2103c) as amended, on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to non-forest 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.

The Parties agree that the purpose of this easement is also to assure that the Property herein described as Schedule "A" and hereby encumbered as set forth in Schedule "B" will be retained

forever in its existing natural, scenic and forested condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. The Grantor intends that this easement will confine the use of the Property to such activities specifically enumerated herein which are consistent with the overall purposes of the easement by protecting the following particular values of the easement area: specifically the scenic, cultural, fish, wildlife and recreational resources, riparian areas and similar ecological values.

Example 3:

WHEREAS, the clearly delineated open space conservation goals and objectives as stated in Forest Legacy Program pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) which was created “to protect environmentally important private forest lands threatened with conversion to non-forest uses” has awarded a Forest Legacy grant in to the Grantors for purchase of a portion of the value of the Easement herein conveyed for a conservation easement on forestal, agricultural, and open space land.

Example 4:

The purpose of this 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 U.S.C. 2103c) 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.

Example 5:

The purpose of this conservation easement is to restrict the exercise of all development rights, residential, commercial or otherwise, on the easement area and to protect the scenic and recreational values of said easement area from conversion to non-forest uses while at the same time allowing for the use of the area for commercial forestry and public recreation purposes consistent with the stated purposes, standards and general intent expressed in Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC 2103c) and the requirements of Section 7 for the Forest Legacy Program.

**B. Reversion Clause:**

The Easement Holder acknowledges that this Easement was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in Section \_\_\_ unless the United States is reimbursed the market value of the interest in land at the time of disposal. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

## APPENDIX J- Sample Content for Baseline Documentation

The following list has been modified from the Checklist included in the Land Trust Alliance and Trust for Public Land's *The Conservation Easement Handbook* (1988).

1. Cover Page
  - including name and location of property, signature of the author/collector, and date
2. Table of Contents
3. Owner Acknowledgement of Condition (see Treas. Reg. Section 1.170A-14(g)(5)(i)(D)).
4. Background Information
  - Ownership information (name, address, 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)
  - Summary of easement provisions (specific prohibitions, restrictions, retained rights, as derived from the language of the easement document)
  - Purpose of easement
  - 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
  - Corporate or agency resolution accepting gift (minutes of the meeting at which a gift is accepted or acquisition approved are adequate)
5. Legal Condition
  - A copy of the signed, recorded 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 easement
  - Copies of any other relevant easements or water rights associated with the property
6. Ecological Features
  - A general description of the ecological features that the easement seeks to protect, such as forest and plant communities, soil characteristics, and habitat.
  - The Forest Stewardship Plan should be used as a guide to determine what information is needed.
  - An inventory of rare, endangered, and/or threatened species and habitat found on the property
  - Reports from wildlife biologists or other specialists that document the status of significant natural elements
7. Agricultural Features
  - Intensity of grazing (can be determined by experts and expressed in "animal units" per acre) and farming
  - Level of pesticide use
8. Scenic Features
  - Official policies citing property's scenic value
  - Number of people who frequent nearby public places (roads, trails, parks) from which they can view property

9. Archeological, Cultural and Historical Features
  - Archeological, cultural and historical sites and resources found within the property, with a focus on those resources that the easement seeks to protect.
10. Human Created Features
  - Improvements (structures, trails, fences, wells, power lines, pipelines, irrigation systems, etc.)
  - Recreation/tourism attractions
  - Trespass damage and disturbed land (stray animals, introduced species evidence of vehicular trespass, etc.)
11. Photographs
  - Aerial photos, if appropriate
  - On-site photos (be sure to record key photo points, record distance and azimuth from structures or other fixed points, and sign and date all photos)
12. Maps
  - A state map showing easement location
  - An 8 ½" X 11" section of a local road map showing easement location
  - The largest scale U.S. Geological Survey topographical map available (usually at a scale of 1:24,000, called a 7-1/2 minute scale), showing easement boundaries
13. Survey
  - Surveys generally are not required, but may be helpful

**For additional Information on Baseline Documentation:**

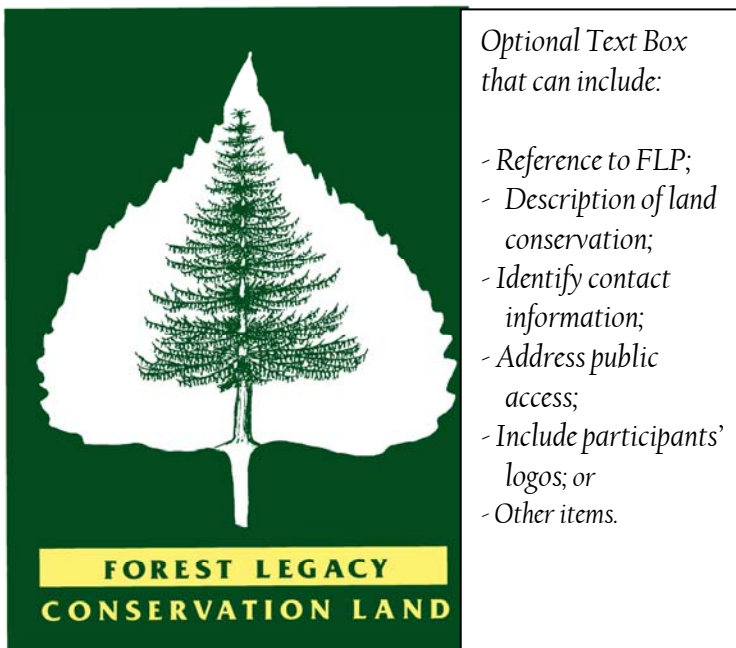
Land Trust Alliance. 2001. *Working Forest Conservation Easements*.

Land Trust Alliance and Trust for New Hampshire Lands. 1991. *The Conservation Easement Stewardship Guide*.

Land Trust Alliance and Trust for Public Land. 1988. *The Conservation Easement Handbook*.

## APPENDIX K- Sample Graphics and Signs

The following are sample graphics for the Forest Legacy Program that can be used for signs, newsletters, articles, and other Forest Legacy Program related documents.



## APPENDIX L- Five Year Program Reviews

### Region/Area/IITF Program Reviews

Forest Service Directives require conducting periodic program reviews to assess if a program is being implemented as intended. Forest Service Manual (FSM) 1410 outlines requirements for Washington Office reviews of Regions, the Northeastern Area (Area), and the Institute of International Tropical Forestry (IITF) (Regions/Area/IITF).

Consistent with the FSM, the following is the required review process for the Forest Legacy Program (FLP) of Regions/Area/IITF program. This review process is designed to review program implementation, identify findings, and develop an action plan to address the findings. The Washington Office can supplement these requirements to address specific program issues or needs.

All reviews will be documented with a final report signed by the principal line officers for each unit and 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.

### Review Process

The Washington Office will conduct reviews of the Regions/Area/IITF FLP, focusing on what is working well and identifying findings and recommendations on how to improve the program. These reviews should be conducted every five years, but if an issue arises that needs attention sooner, the Washington Office may conduct the review sooner than five years. The review needs to include Washington Office and Region/Area/IITF program staff, and, whenever possible, at least one representative from another Region/Area/IITF. In addition, the review should include leadership from both the Washington Office and Region/Area/IITF, whenever possible. The meeting should be conducted in a location that minimizes travel costs.

The review process will consist of three steps, and an optional field visit. 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 Region/Area/IITF will be a critical component of the review and should be done before the closeout meeting.

1. Pre-meeting Coordination: During the two months prior to the meeting, the WO will coordinate with the Region/Area/IITF, gather information (described below), review documents, identify issues, and talk with staff and partners. In addition, the WO should ask the Region/Area/IITF 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 Region/Area/IITF 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 work tasks should be completed prior to 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) program 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 Program Reviews: (1) Obtain a copy of the most recent Region/Area/IITF program review, and any follow-up actions, and (2) Obtain copies of the most recent State reviews completed by the Region/Area/IITF, and any follow-up actions.
5. Specific Documents: Obtain any Region/Area/IITF specific documents, such as policies, FLP grant template, strategic plans, and organizational charts.
6. Interviews: Conduct interviews with Region/Area/IITF employees, State staff, and partners.
7. Review of Files: Review project files to determine if the files comply with the Forest Service record keeping policy (Interim Directive 6209.11-2010-4 issued on October 19, 2010) and the FLP record keeping policy (updated Appendix G in the FLP Guidelines).
8. Federally-held Tracts: If applicable, obtain information on land and interest in lands held by the Federal government.

### Review Checklist

#### Program Delivery

1. What are the program’s biggest opportunities for improvement and how can the WO assist?
2. Describe any major impediments to program delivery in the Region/Area/IITF and what can be done to overcome them.
3. Are there any technical assistance needs that are not being met?
4. How does the Region/Area/IITF work with program partners, including the State lead agency, conservation organizations and other Federal land conservation programs?
5. How does the Region/Area/IITF conduct program reviews? How does the Region/Area/IITF follow-up on action items? What are the major findings from the reviews?
6. How does the Region/Area/IITF ensure that the States’ conservation easements are consistent with the FLP program guideline requirements (see CE checklist Appendix M)?
7. Does the Region/Area/IITF have adequate capacity to administer the program?
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 Region/Area/IITF?

### Grants

10. Are the project/grant files consistent with the Forest Service record keeping policy (Interim Directive 6209.11-2010-4 issued on October 19, 2010) and the FLP record keeping policy (updated Appendix G in the FLP Guidelines)?
11. What oversight does the Region/Area/IITF provide to ensure the States are complying with grant requirements, including ensuring sufficient documentation for cost share?
12. What oversight does the Region/Area/IITF conduct to ensure that the State programs comply with Civil Right requirements (see form FS-850, <http://www.fs.fed.us/cr/poster/grants-greenhigh.pdf>), including ensuring program is accessible to all, displaying the “And Justice For All” poster, using the non-discrimination language, and providing program 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 Region/Area/IITF track spending of FLP dollars (project and administrative)?
15. How are FLP funds used by States in the Region/Area/IITF. -- i.e. How much for purchases, staffing, due diligence, other administration?
16. How does the Region/Area/IITF verify cost share, including ensuring sufficient documentation for cost share tracts?
17. How does the Region/Area/IITF verify State accomplishments (i.e. tract acres, tract completion, etc.)?
18. What oversight does the Region/Area/IITF 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 QAIs for the Region/Area/IITF?
22. What is the status of State responses to QAIs and implementing the action plan?
23. What are the common concerns raised during QAIs? How is the Region/Area/IITF helping to address those concerns?
24. How is the Region/Area/IITF providing assistance to States to complete their appraisal reviews?

### Accountability- How does the Regions/Area/IITF oversee the FLP core program requirements identified below and how are any deficiencies being addressed?

25. Baseline reports for all closed conservation easement tracts (FLP Guidelines, page 18);
26. Forest stewardship plan or multi-resource management plan for all closed conservation easement tracts (FLP Guidelines, page 18);
27. Annual monitoring conducted for all closed conservation easements tracts (FLP Guidelines, page 20);

28. Addresses significant conservation easement violations and/or has a conservation easement violation plan (FLP Guidelines, page 20);
29. Implements a record keeping protocol for all FLP tracts (FLP Guidelines, page 37);
30. Developed an action plan to address recommendations in a Quality Assurance Inspection (Quality Assurance Plan for Forest Legacy Program Appraisals. September 2006);
31. The amount of unspent funds a State has in outstanding grants; and
32. Up-to-date on grant reporting requirements.

## State Program Reviews

Forest Service Directives require conducting periodic program reviews to assess if a program is being implemented as intended. FSM 1460 outlines the requirements for Cooperative Program Reviews of State programs conducted by the Regions/Area/IITF.

Consistent with the FSM, the following is the required review process for the Forest Legacy Program (FLP) of State programs. This review process is designed to review program implementation, identify findings, and develop an action plan to address the findings. The Regions/Area/IITF can supplement these requirements to address specific program issues or needs.

All reviews will be documented with a final report signed by the principal line officers for each unit and 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.

### Review Process

FSM 1460 outlines the objectives, responsibilities, and process for conducting Cooperative Programs Review, including FLP. The purpose of these reviews are to determine whether desired program results or benefits are achieved, objectives established by legislation are met, regulations are followed, and whether agencies have considered alternatives which might reduce costs or increase outputs. (FSM 1461.21) The review will cover all levels of the State FLP organization as well as coordination and communication with Region/Area/IITF program managers. (FSM 1461.22)

### Process

The Regions/Area/IITF will conduct reviews of the States' FLP, focusing on what is working well and identifying findings and recommendations on how to improve the program. These reviews should be conducted every five years, but if an issue arises that needs attention sooner, the Regions/Area/IITF may conduct the review sooner than five years. The review needs to include Region/Area/IITF and State program staff, and, whenever possible, at least one representative from another Region/Area/IITF and State program. In addition, the review should include leadership from both the Region/Area/IITF and the State, whenever possible. Whenever possible, the Washington Office program staff should also be invited to the review. The meeting should be conducted in a location that minimizes travel costs and maximized understanding the program. 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 closeout meeting.

### Background Information Gathering

The following work tasks should be completed prior to the meeting.

1. Summary Tables: Obtain from the National Information Center (NIC) summary tables that identify (1) errors in the FLIS project information, such as insufficient cost share and

cost share identified as “null”, (2) length of time to complete tracts, and (3) program 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 Program Review: Obtain a copy of the most recent State reviews completed by the Region/Area/IITF, and any follow-up actions.
5. State Assessment and Resource Strategy: Obtain a copy of the FLP portion of the assessment and strategy.
6. Interviews: Conduct interviews with Region/Area/IITF employees, State staff, members of the State Forest Stewardship Coordinating Committee (SFSCC), and partners.
7. Review of Files: Review project files to determine if the files comply with the FLP record keeping policy (updated Appendix G in FLP Guidelines).
8. Federally-held Tracts: If applicable, obtain information on land and interest in lands held by the Federal government.

## Review Checklist

### Program Delivery

1. What are the program’s biggest opportunities for improvement in the future and how can the FS assist?
2. Describe any major impediments to program 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 (Statewide Assessment and Resource Strategy, including Assessments of Need incorporated by reference) updated and being implemented?
5. Is the SFSCC operating consistently with the State Forest Action Plan?
6. What is the status of the last program review and its action items?
7. Are the State’s conservation easements consistent with the FLP program guideline requirements (see CE checklist Appendix M)?
8. How are conflicts of interest addressed on the SFSCC?
9. How does the State work with partners, including the Region/Area/IITF, conservation organizations and other Federal land conservation programs?
10. Does the State have adequate capacity to deliver the program?
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?

### Grants

13. Are the project/grant files consistent with the FLP record keeping policy (updated Appendix G in the FLP Guidelines)?
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 program compliance with the Civil Right requirements (see form FS-850, <http://www.fs.fed.us/cr/poster/grants-greenhigh.pdf>), including ensuring program is

- accessible to all, displaying the “And Justice For All” poster, using the non-discrimination language, and providing program 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 States? -- i.e. 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 (i.e. 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 QAI been conducted? If so, what is the status of State responses and implementing the action plan?

#### Accountability- How is the State complying with the FLP core program requirements identified below and how are any deficiencies being addressed?

26. Baseline reports for all closed conservation easement tracts (FLP Guidelines, page 18);
27. Forest stewardship plan or multi-resource management plan for all closed conservation easement tracts (FLP Guidelines, page 18);
28. Annual monitoring conducted for all closed conservation easements tracts (FLP Guidelines, page 20);
29. Addresses significant conservation easement violations and/or has a conservation easement violation plan (FLP Guidelines, page 20);
30. Implements a record keeping protocol for all FLP tracts (FLP Guidelines, page 37);
31. Developed an action plan to address recommendations in a Quality Assurance Inspection (Quality Assurance Plan for Forest Legacy Program Appraisals. September 2006);
32. The amount of unspent funds a State has in outstanding grants; and Up-to-date on grant reporting requirements.

## APPENDIX M- Forest Legacy Program Conservation Easement Drafting and Review Checklist

Before conservation easement drafting begins the State Forest Legacy Program (FLP) manager will meet with the Regional, Northeastern Area (Area), or the International Institute of Tropical Forestry (IITF) (Region/Area/IITF) FLP manager to discuss FLP conservation easement requirements.

Before a project closes, the Region/Area/FLP manager will review the final conservation easement.

The FLP conservation easement checklist is an explanation of the requirements for FLP conservation easements. The intent is to make conservation easement drafting by the States more efficient and to help Region/Area/IITF FLP managers communicate FLP requirements with others. The checklist includes items which are required by the June 2003 FLP Implementation Guidelines plus other considerations. There may be additional Region/Area/IITF requirements for conservation easement language. These requirements are not discussed in this document.

Also, State law may require or prohibit particular language or a particular format. It is not possible to develop a single conservation easement to meet all needs. Each State is different, each deal is different. What is the same from easement to easement is that the purpose of the document is to implement the State Forest Legacy Program.

In addition to meeting program requirements each State has the responsibility to develop conservation easements that do not conflict with their State Forest Action Plan [Which includes the Assessment of Need (AON)]. Each State should supplement the checklist with restrictions or requirements outlined in their State Forest Action Plan (including AON).

Ensuring that all items on the checklist are addressed in an easement does not assure that the conservation easement will implement FLP purposes and is eligible to enter the FLP. A conservation easement or conservation restriction is not merely a collection of clauses but a document that stands as a whole. The entire easement must be reviewed and evaluated.

The Region/Area/IITF FLP managers can provide examples of provisions that meet the requirements outlined in the checklist.

## Forest Legacy Program Conservation Easement Language Checklist

For land to enter the Program the conservation easement must protect forest values and must not have reserved rights that could negatively impact the conservation values being protected. What follows is a list and explanation of what provisions should be included and what should not be included.

■ **Purpose Provision.** The purpose clause indicates that the acquisition of the easement supports FLP goals. The June 30, 2003 Forest Legacy Program Guidelines discuss the purpose and authority clauses. Section XIV (page 18) states in part “*Conservation easements are required to contain language pertinent to the purpose of the FLP and a reversionary provision to ensure the conservation investment of FLP into the future.*” Examples of these are provided in Appendix I on page 40 and 41 of the Guidelines.

■ **Reversion Provision (Language Provided in Guidelines)**

The reversion clause ensures that the Federal investment will not be lost. This requirement can be found in the Guidelines Part I. Section XIV page 18; and Part 2 Section III pages 24-25. An example of the reversion language can be found in Appendix I of the Guidelines (p41). [Note: this example includes a reference to section 5 A, this is because this example was taken from an actual easement that contained a section 5 A. Make sure to remove this reference, unless of course there is a pertinent section 5 A.]

■ **Assignment language** limiting transfer of interest only to another governmental entity. The basis for this requirement can be found in the Guidelines Part 2.II (page 24) “*Title to such lands or interests in lands will be vested in the State or unit of State government.*” Examples of this language can be found in Appendix I of the Guidelines (p 41). This guidance seeks to address a requirement of the enacting legislation (16 U.S.C. 2103c)(h)(2).

■ **Prohibition/Limitation on subdivision.** The Guidelines state that residential subdivision is a noncompatible use (Part I Section II). However, the FLP does not absolutely prohibit subdivision of property. Division of the property into smaller parcels may be possible under certain limited circumstances. Pursuant to State law and the State Forest Action Plan (including AON), leases (depending on the purpose and terms) and bona fide boundary line adjustments are a normal and acceptable exception to subdivision prohibitions.

In some cases, it also may be appropriate to allow limited future division of very large projects into smaller parcels. If the project allows for subdivision; how this will occur should be clearly laid out in the easement, sizes and which parcels will be subdivided should be determined and be identified in the conservation easement. The easement should be clear that the easement follows the subdivided parcels and will be rerecorded. If there is to be a division of a reserved right, be clear how it will be divided. Keep in mind that subdivisions can quickly double and triple the administrative demands of a project. In other words, the work increases but the land protected does not.

■ **Prohibition of industrial, commercial (other than traditional forest uses as defined by State Forest Action Plan (including AON) and residential use of the protected**

**property.** The Guidelines State in Part I Section 2 that: “Nonforest uses are uses of the land inconsistent with maintaining forest cover including, but not limited to, activities that result in extensive surface disturbance such as residential subdivisions, commercial development, and mining. These uses generally should be excluded from FLP conservation easements or land purchases.” Thus, based on the guidelines, these noncompatible uses should be prohibited, especially when there allowance will make it difficult to protect forest resources.

When there is an existing or proposed future use on the property that is incompatible, these areas should be excluded from the project. If this is not possible, these uses must be within reserved areas. Reserved areas are defined by the Guidelines as “...designated areas where nonforest uses (e.g. house, barn, remote recreation camps, etc.) are or will be allowed, but are inseparable from the land holding and do not have a detrimental impact 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...To the extent possible these area of noncompliance should be excluded from the FLP project.”

A residential building envelope may be included in the conservation easement; this envelope is not within the protected property but is part of the larger property. These envelopes may not be divided from the protected property and may not have a detrimental effect on the conservation easement values. For example it should be located on the edge of the property on an existing road. Examples of reserved areas that could severely degrade the conservation value of a property, and thus should not be allowed in a FLP conservation easement, include: large or multiple reserved areas, allowance for future construction of many or large structures, locating areas deep within a conserved property, areas in proximity to riparian, wetland, critical wildlife habitat or other sensitive resources.

The location of reserved areas must be identified and surveyed and appropriately addressed in the appraisal.

There 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 timing of the uses should be clear. The easement should be clear that such uses will be outlined in the Forest Stewardship Plan/Multi-use Management Plan.

- **Prohibition on surface disturbance such as mining or drilling.** Non-compatible uses are defined in Part I Section II (p. 6) of the Guidelines: “Nonforest uses are uses of the land inconsistent with maintaining forest cover including, but not limited to, activities that result in extensive surface disturbance such as residential subdivisions, commercial development, and mining. These uses generally should be excluded from FLP conservation easements or land purchases.”

It is possible to allow limited excavation of sand and gravel for on-site use for roads and landings and otherwise support allowable activities. 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 Region/Area/IITF managers. Such activities should also be addressed in the Forest Stewardship Plan or multi-resource management plan.

Limited oil and gas extraction that does not adversely impact the purposes of the FLP may also be allowable. The impact of such use must be limited and localized. Any lease agreements must be subordinate to the conservation easement and must be developed in consultation with the State lead agency.

Any preexisting severed mineral reservations or leases must be evaluated. The guidelines state in Part I Section XIV that "...a determination will be made as to whether the 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 pursuant to the purpose of the FLP without acquiring the mineral rights." In short, a property or portion of a property may not be eligible to enter the FLP if there are outstanding rights that could adversely impact the conservation values or forest uses of the parcel.

- **Duties of Owners Provision** This provision requires the landowner to manage the property in a manner that is consistent with the purposes for which the land entered the FLP and that the landowner shall not convert the property to other uses (see references in paragraph below).
- **Requirement for development of and adherence to a Forest Stewardship Plan or Multi-resource Management Plan.** This provision outlines the requirement for the plan. The conservation easement language 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 and must be completed and approved before closing. Generally, the plan period is 10 years but may be longer in accordance with specific State Forest Stewardship Plan policy. Often conservation easements will require that management plans be updated when property changes hands. This is not a requirement but is a good opportunity to meet with a new landowner and review the conservation easement. A definition of the Forest Management Plan can be found on pages 4 and 5 of the Guidelines. The Forest Management Plan is discussed in the Program Guidelines Part I. Section XVI and in Section XVII. Landowner Participation. The requirements for plans and adherence to plans have their roots in the enacting legislation (d.) Implementation. (1) and i. Duties of Owners).
- **Language that ensures that compatible non-forest use occupies not more than 25% of the protected property.** [Less if State Forest Action Plan (including AON) further limits the amount] If there is greater than 25% of nonforest uses at the time of closing, ensure that the approved Forest Stewardship or management plan calls for reforestation within 10 years. The Guidelines discuss compatible non Forest in Part I Section II: "Compatible-nonforest uses are nonforest uses of the land that may be compatible with forest uses as part of an undeveloped landscape, including cultivated farmland, pasture,

grassland, shrubland, open water, and wetlands. These nonforest uses should be less than 25 percent of the total area. Forest Legacy funds should only be used on parcels with forestland as defined in a State's AON. Other funding sources may be used to protect nonforested areas on those parcels with less than the minimum required forest cover.

- **Language to ensure the right to enter the property to monitor the property.** The Guidelines Part I Section XVI page 20: state that: "Monitoring FLP conservation easement shall occur periodically, but not less than annually." Outlining this in the easement clearly outlines your right to enter and also notifies the landowner that this is an activity that will occur on a yearly basis. Violation and enforcement provisions should also be considered.

#### **Other considerations when drafting conservation easements:**

If the landowner plans to take a tax deduction in accordance with IRS regulations, they may request additional language to the conservation easement. Work with your 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. Restrictions and reservations in conservation easements should be clear and quantifiable. To the extent possible terms like "to the extent possible" should be avoided. Restrictions and reservations should be quantifiable and ambiguity should be avoided. If terms like reasonable, appropriate, to the extent possible/practicable, limited, unnecessarily or other non-specific terms are in the easement then the easement should be clear about who will determine what is "appropriate", "reasonable" etc. and how it will be done. These determinations should be done by the easement holder. It benefits both the holder of the conservation easement and the landowner if the conservation easement is clear and unambiguous.

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. As a conservation easement holder, you do not have to agree to all the restrictions that a landowner wants.

Conservation easements should include terms that limit additional easements, long-term leases or contracts. Any subsequent easement or agreement should be subject to approval by Grantee. Grantee shall ensure that additional long-term or permanent agreements do not negatively impact the protected conservation values or the purposes of the FLP or would 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 sole discretion of the Grantee. An example of an additional non-compliant 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.

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.

## APPENDIX N- Guide to Evaluating Appraisal Risk Factors

All Forest Legacy Program (FLP) acquisition of land or interests in land using Federal funds must comply with Federal appraisal standards “Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000”. In all cases a qualified review appraiser (defined in Appendix H) must complete the appraisal review. In some cases the appraisal review will be conducted by a Federal review appraiser or will require some degree of Federal review appraiser involvement.

Using the information below and working with State FLP manager, the Region/ Northeastern Area (Area)/ and International Institute of Tropical Forestry (IITF) (Region/Area/IITF) FLP manager will determine the degree of involvement by a Federal review appraiser in a project appraisal. In some cases, the determination will be that a Federal review appraiser will be the reviewer of record. In other instances, the determination will be that a Federal review appraiser will provide technical assistance to a State such as: being available to answer questions a State or contract review appraiser might have, participating in the required pre-work meeting, drafting or reviewing the appraisal instructions, or other involvement as determined to be appropriate and necessary to ensure that FLP requirements are met. Lastly, it may be determined that involvement by a Federal review appraiser is not needed.

This decision will be based upon an evaluation of total dollar amount and program and project risk factors. Many State programs will have one or more of the program risk factors discussed below yet be successful in complying with Federal Appraisal Standards. Identifying one or more program risk factors should not automatically result in a determination that a Federal review appraiser must be the appraiser of record. Working with State FLP manager, the Region/Area/Program FLP manager will evaluate the current circumstances of a given project and program and will then determine the appropriate degree of Federal review appraiser involvement based upon the program and project risk factors.

### **Risk Factors to consider:**

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#### **Program Risk Factors**

The purpose of evaluating Program risk factors is to determine if a State has sufficient policies, procedures, and controls in place to ensure compliance with Federal appraisal standards. If they do not; there is a risk that standards may not be met. If risk factors are identified, the Region/Area/IITF FLP manager will work with the State FLP manager to identify the appropriate involvement of a Federal review appraiser to mitigate that risk.

In many States, a Quality Assurance Inspection (QAI) has been conducted. The QAIs and the current status of a State’s follow up to findings provide an evaluation of whether a State has sufficient policies, procedures, and controls in place to ensure compliance with Federal Appraisal Standards, as well as whether a State has completed any appraisals that have not fully complied with those standards. If there are substantial issues identified in a QAI, and the State program has not sufficiently addressed the follow up recommendations, the Region/Area/IITF

FLP manager may require the involvement of a Federal review appraiser until the State program has made changes to ensure compliance with Federal Appraisal Standards.

The QAIs that have been completed have identified program risk factors (items 2-6 below) that a Region/Area/IITF FLP manager can use to determine the appropriate level of involvement of a Federal review appraiser even if a QAI has not been completed for a State.

**Program Risk Factors to consider:**

- 1) *Quality Assurance Inspections* have identified the following performance issues and there have not been changes to ensure they do not occur again:
  - Lack of or insufficient review of appraiser qualifications;
  - No written instructions provided in advance to the appraiser by a qualified review appraiser;
  - No pre-work meetings or discussions between the appraiser and review appraiser;
  - Appraisal or appraisal review report in file non in compliance with Yellow Book.
  
- 2) *Limited experience of State FLP managers or where there is fragmented responsibility for implementation of the FLP in the State:*
  - Limited staff to oversee the FLP.
  - History of a lack of coordination from State appraisal/review staff with State FLP.
  - Lack of applicable appraisal training or experience. Some State program manager may not be informed consumers of appraisal services, know what services to ask for, understand appraisal/review products they receive; be experienced in managing contracting for appraisal or contract review assignments, or be effective in translating FS requirements to State appraisal/review staff.
  - 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.
  
- 3) *Lack of qualified appraisers/reviewers:*
  - Limited pool of qualified appraisers and/or review appraisers in the state with Yellowbook experience. This can create an undesirable situation where a small pool of appraisers alternatively perform appraisals and review each other's work. This can give the appearance that reviews are not conducted in an impartial and objective manner.
  
- 4) *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 USPAP Standard Rule (SR) 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 (FLP Implementation Guidelines Section XV).

5) *Degree of oversight role of acquisition activities* ceded to partners organizations by the State: Partner organizations are often important to the success of a project. However, a potential conflict of interest situation exists when non-profit organizations (NGO's) assume an extensive oversight role in the contracting process for appraisals or appraisal reviews. This is exacerbated when the NGO is also the property owner. There should be a clear definition of roles and responsibilities if significant acquisition activities are ceded to partner NGO's.

### Project Risk Factors

Generally, project risk factors are related to the complexity of the assignment. The Region/Area/IITF FLP manager will discuss the project with State staff to evaluate the project risk factors. It is likely that in many cases not all of the items outlined below can be known before and appraisal is underway. Certain elements of complexity (item 1 below) of a project can be evaluated relatively easily before a decision has been made about the involvement of a Federal review appraiser. Other items of complexity (items 2-5) may not be discovered until an appraisal is underway. To the extent possible, the Region/Area/IITF FLP manager should evaluate all project risk factors before making the determination about the involvement of a Federal review appraiser; but from a practical standpoint, that may not always be possible.

### Project Risk Factors to consider:

- 1) *Initial complexity of the appraisal assignment:*
  - A property with multiple contributory value components. (i.e. Contributory value of timber, minerals, & improvements and outstanding interests of same. This type of appraisal might require the use of outside consultants.)
  - An acquisition where a portion of a property will be acquired in fee and a CE 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.
- 2) *Lack of clarity of the interests to be appraised* (e.g. 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 which the owner can legally convey. For FLP projects, the purpose should also be to identify the property, or parts of a property, which 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” which 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 (ex. 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.

- 3) *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 which value only the acquisition.
- 4) *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 in influencing value. It is sometimes the case that only a survey will indicate legal access.
- 5) *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- Process for Conducting Quality Assurance for Forest Legacy Program Appraisals (updated 5-18-2012)

The Forest Service will conduct quality assurance of appraisals and appraisal reviews completed within the Forest Legacy Program (FLP).<sup>1</sup> The quality assurance will consist of two components: (1) a Quality Assurance Inspection (QAI) report, and (2) communication and coordination with the States regarding the findings of the QAI and follow-up actions. Below is the process for conducting quality assurance.

**Background:** The Forest Legacy Program (FLP) was authorized by the 1990 Farm Bill, which amended the Cooperative Forestry Assistance Act of 1978, and directs the Secretary of Agriculture to establish the FLP to protect environmentally important forest areas that are threatened by conversion to non-forest uses. FLP was amended by the 1996 Farm Bill, to allow for grants to the States. Through FLP, the Forest Service provides grants to State agencies (typically the State Forestry Agency) to protect important forests through permanent conservation easements (Approx. 65% of all FLP projects) and fee-simple purchases (Approx. 35% of all FLP projects).

All FLP project appraisals are required to comply with the *Uniform Appraisal Standards for Federal Land Acquisitions* (UASFLA or “Yellow Book”) and the *Uniform Standards for Professional Appraisal Practice* (USPAP). The FLP Guidelines ([http://www.fs.fed.us/spf/coop/library/flp\\_guidelines.pdf](http://www.fs.fed.us/spf/coop/library/flp_guidelines.pdf)) allow the Grantee (State agency) to complete the appraisal and appraisal review through in-house staff, by contract, or by working with a Federal review appraiser.

As required in the FLP Guidelines, FS provides quality assurance oversight to ensure the State agency’s appraisals are in compliance with the federal appraisal requirements. In order to provide such oversight, the Forest Service established the Quality Assurance Inspection (QAI) process, a helpful annual review of select State agencies’ processes and appraisals. On an annual basis 8-12 State grant recipients are reviewed. States are reviewed on a five-year cycle, but may be longer depending on the number of completed real estate transactions by the State. The QAIs assess completed real estate transactions and present findings for the improvement of future appraisals/appraisal reviews.

### Purposes:

- Provide FLP management in the Washington Office (WO) and Regions, the Northeastern Area (Area), and the Institute of International Tropical Forestry (IITF) (Region/Area/IITF) with:
  - An evaluation of participating FLP States as to how they carry out appraisals and appraisal reviews for FLP projects.
  - An assessment of the quality of the appraisal and appraisal review process for completed real estate transactions and present findings that ensure compliance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or Yellow

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<sup>1</sup> The following quality assurance plan was developed to address the requirements in the *Forest Legacy Program Implementation Guidelines* (June 2003), page 19. (1) planning and coordinating annually, (2) requiring checks and balances, (3) conducting spot checks, and (4) following *Uniform Appraisal Standards for Federal Land Acquisition*.

- Book) and the Uniform Standards for Professional Appraisal Practice (USPAP) for the improvement of future appraisals/appraisal reviews.
- Information to assist the States in building appraisal and appraisal review capacity to achieve required standards for FLP appraisal services.
  - Carry out requirements in the *Forest Legacy Program Implementation Guidance, Forest Legacy Program 5-Year Strategic Direction, A Report to the Committee on Appropriations, U.S. House of Representatives on the U.S. Forest Service Forest Legacy Program*, and the final USDA Office of Inspector General Audit of the FLP.

### Quality Assurance Inspections:

Objectives: Through appraisal and review expertise and experience, the QAI report preparer will provide:

- Professional, timely, thorough, cost-effective and relationship-building QAIs of selected state agencies.
- Documented findings using the QAI Outline of State agency appraisals and the procedures for preparing and evaluating the appraisals.
- Independent findings of the appraisal and State processes regarding compliance with the *Uniform Appraisal Standards for Federal Land Acquisitions* (UASFLA or Yellow Book) and the *Uniform Standards for Professional Appraisal Practice* (USPAP).
- Findings that aid the States in developing and/or enhancing appraisal and appraisal review processes and capacity to achieve compliance with required appraisal standards for FLP transactions.

Scope: The QAI report preparer will schedule, conduct and document findings from QAIs in accordance with the QAI Outline. For purposes of clarification, the QAI report preparer will not conduct a USPAP Standard 3 Appraisal Review on either the appraisal or the appraisal review. The QAI report preparer is not being asked to supply an opinion regarding the quality of the appraisal or appraisal review. Additionally, the QAI report preparer is not being requested to develop, without advocacy, an analysis, recommendation, or opinion where at least one opinion of value is a component of the analysis leading to the assignment results. The QAI report preparer is requested to provide constructive findings regarding appraisal processes that would ensure compliance with federal regulations. The QAI report will not create policies or guidance.

Annual Schedule: Every five years, conduct QAIs for States that have closed at least two FLP tracts. With input from the Regions/Area/IITF FLP managers, Regional Appraisers, and the Washington Office's Chief Appraiser, the WO FLP manager will develop an annual schedule based on geographic distribution, number of tracts completed, amount of FLP funds expended, State-specific circumstances, level of Federal involvement in appraisals, and availability.

QAI Logistics: Specific dates for conducting QAIs should be coordinated between the QAI report preparer and the State by the Region/Area/IITF FLP manager. The QAI report preparer will invite the State FLP coordinator, the State representative that oversees FLP appraisal work (if different from FLP coordinator), and the FS Regional Appraiser. In

addition, the Region/Area/IITF FLP manager is encouraged to participate in the entire QAI, with emphasis on the closeout.

QAI Report Preparer: The QAI report preparer must have familiarity with the FLP program and federal appraisal requirements. In addition, it is encouraged that the QAI report preparer not be involved in appraisals reviews within the State.

Funding: Funds for conducting QAIs must be included in the annual program direction.

Efficiencies: To minimize burden on the State and Region/Area/IITF FLP manager, the QAI report preparer will explore cost and time saving opportunities such as conducting some work remotely and combining State program reviews with QAI, when appropriate.

Process: The QAI report preparer will conduct QAIs in accordance with the QAI Outline below. QAIs will be conducted in-person or virtually, depending on the preference of the State agency and the availability of electronic information. WO-S&PF will make the determination of in-person or virtual. The QAI report preparer will:

- Conduct pre-visit activities to become familiar with the State grants. Using contact information provided by FS, contact the State agency points-of-contact to establish an agreed upon schedule for conducting the QAI.
- Schedule and conduct in-person or virtual interviews, depending on the QAI, of State employees (typically this is no more than two employees) using the QAI Outline.
- Review FLP appraisal case files. For virtual reviews, electronic files will need to be requested.
- Conduct a close-out meeting with the State and summarize initial findings.
- Develop the QAI report based on the process below. Typically, first time reports average 8-12 pages in length and repeat QAIs average 6-10 pages in length.

Report:

- The QAI report will document the inspection findings, using the attached outline as a guide.
- The QAI report cannot create policy or guidance. QAI findings shall be consistent with the *Forest Legacy Program Implementation Guidance*, *Uniform Appraisal Standards for Federal Land Acquisitions*, *Uniform Standards of Professional Appraisal Practice*, other FLP program requirements, and accepted appraisal techniques and procedures. The QAI report should support findings with reference citations.
- The QAI report preparer will provide the Region/Area/IITF FLP manager and the WO FLP manager with a draft report for review. A copy will also be provided to the Regional Appraiser for optional review. The Region/Area/IITF FLP manager may share the draft QAI report with the State. The preparer of the QAI report has final authority on findings.
- The QAI report preparer will provide the final report to the Region/Area/IITF FLP manager and the WO FLP manager. A copy will also be provided to the Regional Appraiser. The Region/Area/IITF FLP manager may share the final QAI report with the State.

### Communication/Coordination of Findings

- The Region/Area/IITF FLP manager will review the QAI report and provide the findings from the QAI report to the State.
- The Region/Area/IITF FLP manager will work with the State to develop a follow-up document within 60 days of the date QAI findings are provided to the State. This document will include a list of action items, an explanation of how the State is already addressing or plans to address the findings, and a rationale for specific findings with which the State does not agree.
- Because there are limited FLP administrative funds, the Region/Area/IITF FLP manager will work with the State to identify cost savings opportunities to address the findings.
- The Region/Area/IITF FLP manager will provide the QAI report preparer with the State's response to obtain their professional opinion on the adequacy of the State's response.
- The Region/Area/IITF FLP manager will work with the State to implement report findings as necessary.

### National Oversight

- The Regions/Area/IITF FLP managers will provide the WO FLP manager with semi-annual progress reports (due on December 31<sup>st</sup> and June 30<sup>th</sup>) on the status of the State's progress addressing the QAI findings.
- Consequences of not implementing the State's QAI response will be addressed in the annual Forest Service Reply-Due letter soliciting upcoming proposed projects.

Scope: See attached outline.

### References:

- *Forest Legacy Program Implementation Guidelines*. June 2003. U.S. Forest Service.
- *USDA Forest Service, Forest Legacy Program- 5-Year Strategic Direction*. December 2005.
- *A Report to the Committee on Appropriations, U.S. House of Representatives on the U.S. Forest Service Forest Legacy Program*. June 2002.

## QUALITY ASSURANCE INSPECTION

### 1) State Law – Policy - 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 administer properly those contracts? If not, how have program oversight and monitoring requirements been met in terms of accountability?
- e) Will the state lead agency likely request 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 the state maintain a list of appraisers that currently meet minimum qualifications to accept FLP cases? (yes/no)
- c) Was the FS consulted during the appraiser/reviewer selection process? (yes/no)
- d) How was the appraiser/reviewer evaluated in compliance with FLP Guidelines Appendix H?
  - i) By whom?
  - ii) How was it documented?
- e) Was a pre-work conference conducted with the appraiser/reviewer/FS? (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 prior to 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 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 non-compliance) with the Uniform Appraisal Standards for Federal Land Acquisitions (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 non-compliance) with the Uniform Standards for Professional Appraisal Practice

**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 Uniform Appraisal Standards for Federal Land Acquisitions (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 non-compliance) with the Uniform Standards for Professional Appraisal Practice

**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 easement terms and conditions considered by the appraiser match the easement language provided by the client?
  - iii) Does the 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 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 program operations as well as any significant items of compliance and/or non-compliance with the FLP Implementation Guidelines and the UASFLA/USPAP standards.

