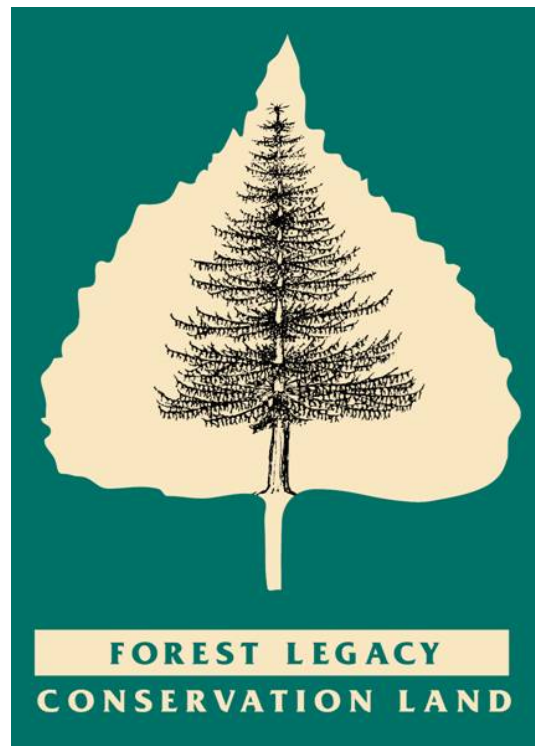


Forest Legacy Program Users' Guide



June 2006



USDA Forest Service
State & Private Forestry
Cooperative Forestry

This users' guide is intended to provide Forest Legacy Program (FLP) managers with useful information, references, examples, and tips for implementing the FLP. It does not create new policy, guidance, or requirements. In addition, each state has its own laws and requirements, so some components in this handbook might not be applicable to a specific project or state situation.

The idea behind the guide was to provide a foundation for a "How To" handbook. Each manager can then add specific information, including state specific information, to be tailored to the needs for each state program.

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Part 1. Hands-On Information

Section 1.1. Assessment of Need

- *Forest Legacy Program Implementation Guidelines* (FLP 2003 Guidelines) (pg 8-11) outline Assessment of Need (AON) requirements.
- The AON is the primary program implementation document for a State.
- Produced by a State, or a federally recognized Indian tribe, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC) (see Part 1, Section 1.3).
- Use other natural resource plans such as State wildlife conservation strategies, coastal zone management plans, bird conservation region plans, water quality plans, and recreational plans, when developing or updating the AON.
- Use the public input process as an opportunity to identify potential project partners, to define Forest Legacy Areas (FLAs), and to obtain public support for land conservation and Forest Legacy Programs (FLPs).
 - Document feedback and comments to help support your AON.
- Keep your Forest Service region/Northeastern Area/International Institute of Tropical Forestry (FS region/Area/IITF) manager and Washington Office (WO) national program manager up to date on AON status.

Developing an AON

- Don't "reinvent the wheel." Ask other State, FS region/Area/IITF, and national FLP managers for good examples.
- Some AONs are available on the State's Web sites and links can be found at <http://www.fs.fed.us/spf/coop/programs/loa/flp.shtml>.
- AONs need to be reviewed by the FS region/Area/IITF and WO.
- AONs must be approved by the FS region/Area/IITF. Once finalized, the State lead agency sends the final AON to the FS region/Area/IITF for final approval. Once approved, the FS region/Area/IITF forwards the AON to WO for approval by the Chief of the Forest Service. The WO then works with appropriate offices to obtain approval from the Secretary of Agriculture.

Reviewing and Amending an AON

- State lead agencies are required to periodically review their AON (at least 5 years) and to document the process, as well as make changes as necessary.
- Depending on your FS region/Area/IITF, you may be able to obtain administrative funds for reviewing and updating your AON. Don't forget to request funding when you decide you need to make adjustments to your AON. You may or may not get it but if you plan ahead and present sound reasoning, there is a higher chance of receiving funding when you need it.
- AON changes need to be made in consultation with the SFSCC and may require public involvement.
- The changes fall into two categories that will determine the approval level.
 - 1) **Minor AON Amendments.** FLA boundary adjustments, changes to prioritization process, or other minor corrections. Approved by FS region/Area/IITF.

- 2) **Significant Amendments.** Significant amendments include modifications to the State program, changes to the FLA eligibility criteria, changes in policies or conditions that have occurred since the previous AON, adding or deleting an FLA, or changes to the conservation goals or objectives associated with that FLA. This may include a significant rewrite or “start-over”. – Approved by the Chief of the Forest Service.

References/Additional Information

USDA Forest Service. 2003. *Forest Legacy Program Implementation Guidelines*

Example AONs- <http://www.fs.fed.us/spf/coop/programs/loa/flp.shtml>

Section 1.2. Beginning Project Steps

- Be upfront with landowners. Let them know that this process will take a while, that the program is based on willing seller and willing buyer, and that a stewardship plan or multi-resource management plan will be required.
- If your State typically required a 25 percent donation from the landowners to cover the cost-share match, let them know early.
- The Assessment of Need outlines the process by which the State lead agency will evaluate and prioritize projects. The State lead agency and State Forest Stewardship Coordinating Committee (SFSCC) (see Part 1, Section 1.3) will also decide how to solicit applications, and what the application will include.
 - A landowner application can range widely in complexity. If an application is too brief there may not be enough information for the SFSCC to accurately evaluate the property. If the application is too complex this could leave landowners frustrated, submitting incorrect information, or requiring the partnership with an organization that could cost the landowner money just to apply for the program (see Part 3, Example 3.1).
 - The prioritization process does not necessarily require a “score sheet” as many SFSCCs discuss and debate the tracts and come to a priority order as part of a group decision (see Part 3, Example 3.2).
- A useful form is a landowner contact information sheet, which is especially important if there are multiple landowners for a tract. Having a single point of contact can help reduce delays of conflict amongst the family. (Brother says yes without consultation from others, others find out later don't like the decision he made and then request changes)
- Another useful item is an intent-to-participate letter signed by the landowner(s), to help document the landowner's interest in participating in the program. Though not required by the Forest Service, this is can be very important especially if a partner organization is involved. However, this should not be an end all be all type of letter just something from the landowner that acknowledges they are aware of the application.
 - This is to avoid an organization from submitting an application on behalf of the landowner without the landowner's full knowledge of what they may have agreed to in a phone conversation.
 - The letter should be worded in such a way that the landowner is not signing a purchase agreement or even a letter that could be interpreted as such.
- Encourage the landowner(s) to consult with an attorney for legal and tax advice.
 - The FLP 2003 Guidelines (section IVII) state that you have no jurisdiction to make tax determination or render advice. However, you can direct them to the timber tax Web site, www.timbertax.org, which provides landowners with basic information.
- Notify the landowner in writing that the transaction is strictly voluntary and that unless amicable negotiations result in an agreed-upon price, the transaction will not take place.
- Keep a calendar of steps accomplished, and estimated dates of accomplishment.
- Consider your negotiations with landowners confidential.

- When naming the project and tract names, consider...
 - *Not* including landowner names. The project will likely appear in the press or Federal sources before final funding. It is better not to have landowners' names announced prior to closing.
 - Using a short, catchy name that is descriptive for the project area.
- Have any landowner disputes settled before beginning negotiations. You do not want to be a part of disputes, arguments, family issues that may be ongoing. Ensure that all family members are on the same page with conservation easements, fee purchase, or whatever method you are planning.

Section 1.3. State Forest Stewardship Coordinating Committee

State Forest Stewardship Coordinating Committees (SFSCCs) are defined, and their duties are described, in section 19(b) of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2113) as well as FLP 2003 Guidelines (pg 7).

The SFSCC makes recommendations to the State lead agency regarding the eligibility criteria, Forest Legacy Areas, and project priority recommendations.

Forest Legacy Subcommittee

- Some States have developed a Forest Legacy Program (FLP) subcommittee, rather than utilizing the full SFSCC for all FLP activities.
- This has the benefit of having a group that is entirely focused on the FLP in a given State. There are two levels of control that an FLP subcommittee can have.
 - 1) An FLP subcommittee can operate as a branch of the SFSCC and makes recommendations to the SFSCC on project priorities. In this scenario the SFSCC is still the authorized committee in FLP matters. Or,
 - 2) An FLP committee is delegated the SFSCC's responsibility related to the FLP in the State and makes all the recommendations of projects for the FLP. This scenario requires the head of the State lead agency to formally inform the Forest Service with a letter stating that delegation of authority of the SFSCC in the FLP has been granted to the FLP subcommittee (see Part 3, Example 3.3).
- When identifying members of the SFSCC or FLP Subcommittee, use it as an opportunity to include potential partners or individuals/organizations that either have land conservation programs, have complimentary natural resource and forestry backgrounds, or have useful local knowledge and contacts.

Section 1.4. Partners

Partnerships are solidly built on three legs

Trust- Establish, facilitate and maintain it throughout.

Resources – Acknowledge what you and your partners bring to the table
(money, knowledge, access, legitimacy, goodwill, etc.)

Motivations – fully understand, acknowledge and appreciate your and partner's reason for cooperating.

The Forest Legacy Partnership

The State Forest Legacy Program (FLP) requires a clear, concise goal statement that articulates the direction of the State FLP. This clear goal statement serves to keep all partners working towards the goals of the State FLP. Conversely, a broad vague goal statement will offer ample opportunity to stray from the State FLP goal.

Key Aspects of Successful Partnership

- Common goals and accountability through written agreements,
- Problem solving attitude,
- Established communication process and a specific end result.
 - Spell out how each party will interact,
 - Commitment to specific objectives, and
 - A way to terminate the agreement,
- A desire for open access to information,
- Performance criteria to ensure desired end result.

- FLP offers a great opportunity to leverage the great works of other partners to stretch your limited resources and scant grants dollars. Many public agencies and private organizations are already working hard to protect your State's natural heritage and to promote conservation on private, working forestlands. They regularly share knowledge and resources as they examine conservation needs and priorities. Invite these programs to learn about each other and develop a unified conservation vision under FLP. Through your selfless teamwork, a whole range of divergent conservation objectives can be achieved.

Helpful Tip: Use and reuse the public input process to foster, maintain, and enhance these valuable partnerships.

Your State will undoubtedly have a more comprehensive list of nonprofits and local and regional conservation initiatives. Here's a short list of possible partners:

Nongovernmental Organizations—Some of the Biggies

- Become familiar with the operations and activities of the nongovernmental organizations. Many will likely have useful plans, resources, and standard operating practices.

- The Land Trust Alliance recently issued a new Standards and Practices document that has useful information. http://www.lta.org/sp/land_trust_standards_and_practices.pdf

The Nature Conservancy

- Operates through strategic, science-based planning that identifies the highest priority land and waters whose conservation will ensure long-term biodiversity.
- Collaborates with State and Federal agencies, land trusts and conservation groups and works with landowners and businesses to achieve its mission.
- Web site is <http://nature.org>.

The Trust for Public Land

- A national conservation organization dedicated to protecting land for human enjoyment.
- Helps develop a “greenprint” for growth by protecting important land that may be threatened by urban or suburban sprawl.
- Does not hold land or easements, but rather is a pass-through partner for land transactions.
- Web site is <http://www.tpl.org>.

The Conservation Fund

- A national nonprofit land and water conservation organization that works to promote economically viable environmental protection.
- Has protected significant working landscapes through the use of conservation easements that provide for perpetual stewardship, while keeping valuable lands on the tax rolls.
- Their Resourceful Communities Program works in the low-income and minority rural communities helping build local capacity to create new economies that protect, enhance and restore the natural, cultural, historic and community resources, while also promoting economic and social justice.
- Web site is <http://www.conservationfund.org>.

American Farmland Trust

- Since 1980, has worked to curb the loss of productive farmland and to promote farming practices that lead to a healthy environment.
- They help farmers, citizens and governmental officials examine various options to protect agricultural working lands – from the sale of private development rights to local conservation entities to the design of new opportunities for “agritourism.”
- Web site is <http://www.farmland.org>.

The Appalachian Trail Conservancy

- Works to protect important features of the environment surrounding the Appalachian National Scenic Trail, which stretches from Maine to Georgia.
- Relies on regional programs for conservation along the trail and acts as liaison to communities and landowners. It also works with local conservation partners to acquire land and easements and educate the community about the importance of the trail resources.
- Web site is <http://www.appalachiantrail.org>.

Audubon Society and “Important Bird Areas” Inventory

- Recently created a blueprint for the conservation of bird habitats across all 50 States. A nonregulatory initiative, the program does not restrict the use of land. Rather it is an assessment on which protection priorities and strategies can be based.

- Using Geographic Information System mapping software and landcover data, Audubon created boundaries based on the tract of contiguous habitat necessary to support the species, population or assemblage of birds for which the site was nominated.
- Important Bird Areas inventory is done State by State. Web site has contacts for each State.
- Web sites are <http://www.audubon.org> and <http://www.audubon.org/bird/iba/index.html>.

Environmental Defense

- Has worked to secure public policies that protect and restore key ecosystems by establishing incentive programs for private landowners and by revamping Federal and State cost-share programs to ensure more funds are targeted for conservation.
- Their Center for Conservation Incentives (CCI) was created to conserve biodiversity on the country's private lands. Among CCI's goals are the design and launching of model projects to demonstrate how existing and new incentive-based strategies can benefit biodiversity and foster private stewardship. Another goal is to build an extensive network of landowners and conservation groups that can champion and help execute incentive-based conservation programs.
- Web site is <http://www.environmentaldefense.org>.

Farm Bureau Federation

- The Nation's largest general farm organization. This nonprofit membership advocacy group represents farmers in legislative and regulatory actions that affect their livelihood.
- Advises farmers on the development of county farmland preservation ordinances.
- Works to influence the present-use values in local tax structures (for example, taxing farmland for its present use rather than its development value).
- Works with State government to support soil and water conservation districts and cost-share programs for conservation practices.
- Informs farmers about conservation provisions of the Farm Bill and works to influence public policy on that Federal legislation.
- Web site is <http://www.fb.org>.

Local/Regional Initiatives

- There are many local and regional partners and initiatives that should be explored.
- The Land Trust Alliance has a listing of their land trust members on their Web site- <http://www.lta.org/>

State Agency Programs and Resources

- State agencies have a variety of programs and resources that could be very useful when developing the Assessment of Need, or implementing projects.
- Each agency has its own structure and authorities, but the following programs and resources are common to most or all States.

Conservation Tax Credit Program

Many States offer unique incentive programs to help landowners protect the environment and sustain our quality of life. A credit is allowed against individual and corporate income taxes when owners donate real property for conservation purposes. Also, interests in property that

promote specific public benefits may be donated to a qualified recipient. Such conservation donations may also qualify for a substantial tax credit.

Cultural Resources

Battlegrounds, forts, Native American cultural sites and historic farmsteads often do double duty as historic places and open spaces. The department helps local governments and nonprofit organizations by acquiring historic properties then leasing the property back to the local group. These partnerships can help preserve historic resources without obligating long-term State funding.

Farmland Preservation Trust Funds or the Equivalent

Many States have funded and authorized programs for the protection of productive farmland under threat of development. Most farm-protection efforts provide for the acquisition of agricultural conservation easements to protect rural areas, with emphasis on lands near urban growth, waterways and environmentally sensitive areas.

State Natural Heritage Program

These State-operated programs work with conservation networks to identify and develop lists of the plants and animals that are most rare and most in need of protection. These programs classify and profile your State's natural communities. Many programs also establish core areas for conservation and often consider the best avenues for protection.

<http://www.natureserve.org/visitLocal/index.jsp>

Park Trust Funds/Bond Referendum

Some States have dedicated funding sources that can match and leverage FLP dollars. These trusts can be the primary funding source for new facilities and land acquisition in the State parks system. Other such funds or bond initiatives may grant funds for local governments to improve parks and recreation and a small percentage for beach and coastal public access.

Plant Conservation Programs

Plant conservation programs enforce laws, issue permits concerning State-listed plants, conduct biological fieldwork and monitor populations of listed species. Many also acquire sites that support State and federally listed plant species and habitat restoration.

Water Quality—Basinwide Planning/Protection

State water quality agencies are charged with preserving, protecting and enhancing the State's surface water and ground water resources through monitoring programs, permitting, management, enforcement and public outreach. Basinwide water quality planning groups use watershed-based approach to restore and protect surface waters in your State and offer invaluable maps, personnel and advice. Some States have grant programs that provide cost-share grants and technical assistance to local governments throughout the State for restoration, beach protection, and land acquisition. Some programs provide public recreation access to streams and lakes and can correct stream bank erosion or other water management programs in parklands.

Federal Programs and Resources

- The Federal Government is a significant landowner in many States. Many of the land management agencies consult with the State about land management, and in some cases partner with State agencies in stewardship or allow a State agency to manage the Federal lands.

- Significant landholding agencies include: the Forest Service, U.S. Department of Defense, U.S. Department of the Interior (DOI) Bureau of Land Management, U.S. Fish & Wildlife Service (USFWS), and National Park Service (NPS), and the U.S. Army Corps of Engineers.
- Some Federal agencies have programs that target land conservation or natural resource stewardship. The program requirements vary greatly, as well as eligible applicants. However, there could be great opportunities to partner with these other programs. But, Federal money cannot be used for matching FLP dollars.
 - Agencies with landowner incentive programs include the Forest Service and Natural Resources Conservation Service (NRCS), DOI USFWS, and Environmental Protection Agency.

Other Federal Land Grant Programs

NRCS—

Farm and Ranch Lands Protection Program

<http://www.nrcs.usda.gov/programs/frpp/>

Grassland Reserve Program

<http://www.nrcs.usda.gov/programs/GRP/>

National Park Service—

Land & Water Conservation Fund

http://www.nps.gov/ncrc/programs/lwcf/fed_state.html

National Oceanic and Atmospheric Administration—

Coastal and Estuarine Land Conservation Program

<http://coastalmanagement.noaa.gov/landconservation.html>

USFWS—

National Coastal Wetlands Conservation Grant Program

<http://www.fws.gov/coastal/CoastalGrants/>

Cooperative Endangered Species Conservation Fund

<http://www.fws.gov/endangered/grants/section6>

North American Wetlands Conservation Act

<http://www.fws.gov/birdhabitat>

Other related programs

<http://www.fws.gov/grants/state.html>

Section 1.5. Negotiations

- Rely on experts or partners whenever possible.
- If you are doing the negotiating, get training.

Below are words of wisdom modified from different sources, but not all will apply to your situation.

Everyone negotiates, almost every day. While successful negotiators seem to practice an art more than a science, certain principles seem to be present that anyone can learn.

- Find out what the needs of the other person are and try to meet them without losing sight of your own goals.
- Listen carefully to the other side.
- Do not personalize statements made by the other side.
- Learn to outline conversations and recognize jargon.
- Try to figure out the best alternative to a negotiated resolution for you and the other side.
- Learn how to deal with different kinds of negotiators, including hardball players.
- Prepare.
- Know what you want to accomplish with specificity.
- Know what your “throwaways” are.

- **Two Basic Approaches.** (1) “Win-lose” negotiations are most often over a single item and each party tries to get the best deal, to the detriment of the other. (2) “Win-win” negotiations involve understanding each other’s interests and finding solutions that will benefit both parties. While win-win is generally more satisfying and can be attempted in any situation, it is especially important in ongoing relationships.
- **Respect.** When the other side feels that you respect him or her, it reduces defensiveness and increases the sharing of useful information — which can lead to an agreement. When people feel disrespect, they become more rigid and likely to hide information you need.
- **Trust.** People tend to be more generous toward those they like and trust. An attitude of friendliness and openness generally is more persuasive than an attitude of deception and manipulation. Being honest about the information you provide and showing interest in the other side’s concerns can help.
- **Preparation.** This is the most important step in many negotiations. You want to be as thoroughly informed as possible about the value of the item(s) you are negotiating — both in general and to the other side.
- **Know your bottom line.** In most negotiations, there is a point beyond which you do not want to go; when you will use other alternatives. Generally, it helps to decide this in advance and not to disclose it at the start. You should also be aware that this may change with more information and new ideas.
- **Cautious disclosure.** It is fully appropriate and wise to start a negotiation without disclosing all of your information and your “bottom line.” If the other side is using a “win-lose” approach and you disclose too much too soon, you will lose all of your bargaining power. If the other side is using a “win-win” approach, then you can work together to “expand the pie” of solutions. They will disclose more and more information and you can do the same, to build trust and create better solutions.
- **Ask questions.** Before stating a position or making proposals, it is very helpful to inquire about the other side’s interests and concerns. This will help you understand what is important to the other

side and may provide new ideas for mutual benefit. Ask clarifying questions to really understand the other's concerns in this negotiation.

- **Making proposals.** It is customary and proper to ask for more at the start than you expect to receive in the final agreement. By proposing your ideal settlement, it lets the other side understand your needs and allows you to show good faith later on by revising your offer after hearing their response. It helps to make a new proposal, rather than to criticize the one the other side made. By brainstorming a list of options together without criticizing them, an agreement may emerge that no one thought of before and that everyone can live with.
- **Write it down.** Many potentially great agreements fall apart because everyone's memory of them was different. You should write it down so that both parties understand the exact terms — who does what, when and where — without mistaken assumptions.

References/Additional Information

Techniques & Tactics (from <http://www.wrightslaw.com/info/mediate.negot.palmer.htm>)

The Art of Negotiation (from http://www.eddylaw.com/articles/voll_nol_art2.htm)

Things To Do and Things Not To Do (from <http://www.wifcon.com/pubs/artofnegotiation.htm>)

Section 1.6. Conservation Easements

- The conservation easement (CE) is the foundation for your long-term relationship with the landowner. Perpetuity is a long time. Make your best effort to get it right the first time.
- It makes sense to have a basic easement, or template, from which you build each project easement. Make sure you include all language required by your State and the FLP 2003 Guidelines (see Part 3, Example 3.5).
- Several examples of easements, text, checklists, and other documents that can be used are included in example 3.5.
- Know your State law (Conservation Easement Act or similar statute). Include that authority in your CE language.
- Have your legal department review all easements before closing.
- Both parties should consider the easement unchangeable. It may be amended, but this should not be a consideration when negotiating the document. Consider this: “Change for the better or don’t change at all.”
- Terms used in easements vary across the country. Some easements refer to permitted and nonpermitted uses; others call them reserved rights and restricted uses (or prohibited uses). Learn what works best for your State.
- The more you restrict, the more you have to monitor and need to enforce if there is a violation. *You should be careful to draft the restricted uses in your easement to match your objectives.* If a violation of a restriction in the easement would not impact the purposes of the easement and the goals of your Assessment of Need, you may not need that restriction. *Draft to your goals*
- “An easement should restrict activities to the degree necessary to protect the significant conservation ... values of the property. An easement may cover all or part of the property, and can restrict various parts of the property differently.” (Byers & Ponte, 2005)
- When drafting, consider your capacity to monitor and enforce. Avoid restrictions that you cannot monitor and enforce.
- Significant alterations to an easement late in the process may impact the value of the interests and may cause an appraisal issue.
- When drafting easements with subdivision rights keep in mind that you are taking on additional relationships. Assume that subdivision will occur if allowed, after all we are talking about perpetuity.
- See Part 3, Examples 3.4 for a Conservation Easement checklist.

- “At least 22 states have marketable title acts or similar statutory term limitations on restrictions on land. These statutes act to terminate interests in or restrictions on land, unless a renewed notice is recorded within a certain number of years.... Easement holders in such states should rerecord a notice of conservation easement periodically unless the state statute allows for easement terms in perpetuity and the easement is perpetual in duration.” Byers & Ponte, (2005). *The Conservation Easement Handbook*,

****Remember**** If you cannot monitor it, or will not enforce it, it should not be in the conservation easement.

References/Additional Information

Byers & Ponte, (2005). *The Conservation Easement Handbook*,

Land Trust Alliance & The Trust for Public Land, (June 1995) *Doing Deals, A Guide to Buying Land for Conservation*

Land Trust Alliance (2001). *Working Forest Conservation Easements: a process guide for land trusts, landowners and public agencies.*, by Brenda Lind.

Section 1.7. Baseline Documentation

- Baseline documentation is a permanent written record of existing conditions and conservation easement (CE) values at the time the easement is acquired. It needs to be objective and provide a "baseline" for future monitoring of the easement.
- Baseline documentation records the condition of a Forest Legacy project CE at the time of acquisition (closing). Baseline data provides evidence of conservation resource values and serves as proof of those resource values.
- Keep in mind that baseline documentation is primarily a legal document, not a scientific one. It is written in terms a layperson can understand.
- Baseline data details the condition of environmentally important forests, scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values that are protected or affected by the terms of the CE. *Only the specific property conditions that are the subject of the CE need to be documented.*
- You may complete the baseline report yourself, with necessary assistance from a qualified forester or biologist. You may also hire the baseline report done by professionals outside your agency.
- FLP 2003 Guidelines (pg. 18) require *a baseline documentation report be completed prior to closing* on an FLP project.
- The Internal Revenue Service requires that a donor establish conditions prior to donation.
- Digital photos do not stand up in court in some States, but they sure are easier to work with for the report. Use your discretion.
 - Include some black-and-white photos if possible; they may last longer than color photos.
- Baseline information needs to be complete prior to the closing date, reviewed and approved by the landowner, and produced in final form. It is then incorporated into the easement at closing and recorded.
- See the Baseline Checklist in example 3.6 for more information. A sample baseline documentation report is located in example 3.7.
- Some useful Web sites for mapping are:
 - <http://geonames.usgs.gov> (go to Query GNIS: U.S. and Territories link);
 - <http://edc.usgs.gov/> (For digital orthoquads);
 - www.terraserver.com

References/Additional Information

Byers & Ponte, (2005). *The Conservation Easement Handbook*,

Section 1.8. Monitoring

This is the most critical endeavor related to the Forest Legacy Program (FLP). We will be judged by future generations on how well we have monitored and protected the public investments and interests on each and every FLP tract.

“A day of monitoring beats a ton of legal fees - every time.” The Wise Ol’ Forest Steward

How Long Do We Have To Do This?

“The governmental entity holding title to interests in land acquired under the FLP shall monitor and manage those interests in **perpetuity**.” (forever and a day)

How Often?

FLP 2003 Guidelines (pg. 20) require an annual monitoring of FLP property, actually the guidelines state “periodically, but **not less than** annually.”

Who Pays?

It is the **State’s responsibility** to cover all monitor and management costs. *You cannot use your FLP grant funds for this activity.*

Why Monitor?

- It is the primary opportunity to determine if the landowner is abiding by the conservation easement (CE).
- Only monitor what is necessary based on the CE.
- Provides necessary diligence to defend CEs in court.
- Maintains ongoing communication with landowners. Keeps the communication channels open between you and your landowner.
- Regular monitoring prevents violations, but look at this as a positive venture. When landowners feel comfortable with your agency and the work you do, they are much less likely to violate the terms of your agreement.

Plan for Tomorrow

Consider setting up an endowment fund for ongoing monitoring of FLP projects. States differ, but some provide an avenue to set up such an account. Landowners can then donate to this account at the time of closing. In some States, these accounts operate on the interest only so there will always be available funds.

- Develop a comprehensive monitoring form that works for you (see Part 3, Example 3.8). Consider automated forms and reporting (e-mail, Internet, and intranet)

- Utilize your local staff. It builds ownership, is efficient and significantly cuts costs. Involve appropriate area staff: water quality, enforcement, technicians

What to Do if There Is a Violation?

- In a perfect world, you will have no CE violations. But have a process in mind. Prevent violations through good relationships with landowners, a clear and enforceable CE, and regular well-documented monitoring.
- If whoever is monitoring notices a possible violation, do not confront the landowner but rather go to the office, check the CE language, and talk with your State attorney. At that point, develop a strategy of how to approach the landowner.
- The State lead agency should immediately address any violations to the CE with the landowner. The landowner should have an opportunity to correct the breach. If the breach is not corrected, enforcement action(s) will be taken by the State lead agency.

Always: Keep your monitoring reports in the permanent file along with deeds and other records. It is wise to make this a fireproof file cabinet.

Know and value the importance of monitoring easements:

- A good baseline sets the foundation for monitoring
- Reaffirms agency commitment to the protected property
- Establishes and maintains open communication with landowner
- Regular monitoring prevents easement violations

Before you monitor:

- Notify the landowner well in advance of the visit.
- Have the owner or their representative accompany you.
- Review the easement and the permitted and nonpermitted uses.
- Consider preparing a summary sheet for each easement.
- Review the baseline data or take a copy with you.
- Gather equipment — maps, photos, cameras, Global Positioning System (if you used it in your baseline)

Onsite tips

- Look for natural or human-caused changes (check boundary)
- Ask the landowner to show you any improvements or changes made (for example, pond restoration, riparian restoration, fencing)
- Ask about past-year accomplishments
- Ask about future plans for timber harvesting, noxious weed treatments, improvements
- Focus on active areas (logging, roads, access points)

References/Additional Information

Byers & Ponte, (2005). *The Conservation Easement Handbook*,

USDA Forest Service. 2003. *Forest Legacy Program Implementation Guidelines* (pg. 20, section XVI).

Section 1.9. Purchase Option

- An option is an agreement to keep open, for a set period, an offer to sell or lease real estate property.
 - An option, for example, can be used to give the buyer time to resolve questions of financing, title, zoning, and feasibility before committing the buyer to purchase.
- An option creates a contractual right; it does not give the optionee any estate in the property. However, the owner is obligated to sell if given notice by the buyer, the buyer is not obligated to purchase.
- An option must contain all of the essential terms of the underlying contract of sale. This means that a binding contract is created immediately upon the optionee's decision to exercise the option.
- "Appropriations for the Department of Agriculture which are available for the purpose of land may be expended for options to purchase land: Provided, that not to exceed one dollar may be expended for each option to purchase any particular tract or tracts of land unless otherwise provided in appropriation or other law." U.S.C. Title 7, section 428a(b).
- 49 C.F.R. Part 24 Subpart B provides rules and regulations for real property acquisition for Federal and federally assisted programs. Additionally, State programs will have their own internal State land acquisition guidelines.
- Documentation of costs is important for effective grant administration throughout land acquisition.
- Reimbursement costs have to follow Federal guidelines for consideration.
- Pre-acquisition costs required to accomplish the project acquisition may include: preliminary negotiations for land acquisition, appraisals; and preparation of project documents.
- Complete documentation/tracking of negotiation steps and correspondence is also recommended (pg. 37, FLP 2003 Guidelines).
- Steps to land acquisition by purchase option will differ by State and may be completed in-house by State representatives or by the partner organization working directly with the landowner, with in-house review and approval.

Definition

Option (Real Estate) – An agreement that permits one to buy, sell, or lease real property for a stipulated period of time in accordance with specific terms. An option is a unilateral right to exercise a privilege.

References/Additional Information

43 C.F.R. Part 24- Real Property Acquisition

43 C.F.R. 12.64- Reimbursement Costs

Section 1.10. Title and Title Insurance

- Order a title search/commitment from a title company; chose a title company in the same county as the project as they will likely conduct the closing.
- FLP 2003 Guidelines (pg. 18) “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”
- You may choose to insure for “less than full value” if you have free title.
 - Provide title company with Federal guidelines from the Department of Justice Title Standards 2001 (<http://www.usdoj.gov/enrd/title.htm>, pg. 12).
 - Know that you are not insuring for full value by using this standard.
 - The U.S. Department of Justice Standard states “A certificate of title or title insurance policy should have a liability amount not less than a sum which is 50% of the consideration paid for the property;...acquisitions of more than \$100,000, a certificate of title...should have a liability amount not less than a sum of which is 50% of the first \$100,000 and 25% of that portion of the value in excess of that amount”.
 - In other words...to figure the premium, take 50 percent of the first \$100,000 of the conservation easement value then 25 percent of the remainder of the value to figure the premium cost.
 - Make sure that your State insurance regulations don't prohibit the issuance of title policies for less than the full consideration.
- Make sure the title company has an accurate legal description to work with (from landowner, from deeds of record, previous title)
- When the commitment is received, ensure that all supporting documents are included; review carefully looking for trust deeds (need to be paid off before closing); mineral rights ownership/severed; lack of access; who access given to; ownership of water rights; all liens and encumbrances must be cleared; any outstanding mortgages must be paid or subordinated (through a subordination agreement).
- Have title commitment reviewed by your legal department; give them at least 1 month for complete review of title and supporting documents.
- After closing, the title company will furnish you with the final policy; keep this in a safe place with your recorded deeds.

Definitions

Title: The right to or ownership of land. Title may be held individually, jointly, in trust, or in corporate or partnership form.

Title search: A check of the title records to ensure that the seller is the legal owner of the property and that there are no liens or other claims outstanding.

Title Commitment: A commitment on the part of the insurer, once a title search has been conducted, to provide the proposed insured with a title insurance policy upon closing.

Title Insurance: Insurance that protects the lender (lender's policy) or the buyer (owner's policy) against loss arising from disputes over ownership of a property.

Subordination: Any mortgage or other lien that has a priority that is lower than that of the first mortgage. In other words, the easement will prevail.

Subordination agreement: A written agreement between lienholders to change the priority of mortgage, judgment and other liens.

References/Additional Information

Department of Justice Title Standards 2001 (<http://www.usdoj.gov/enrd/title.htm>, pg. 12).

Irving and Irvin. 2001. *Real Estate Law*. South-western Thomson Learning.

Reilly. 2000. *The Language of Real Estate, 5th Edition*. Dearborn Real Estate Education.

Section I.II. Site Inspection: Surveys, Mineral Rights, and Environmental Assessment

Property Survey

- Land survey or other accurate legal description may be required for the property or conservation easement. Determine your State requirements.
- Prior to settlement, the legal property description is reviewed and the need for a new a survey is assessed.
- State programs have varied land acquisition guidelines. Check with your realty sections or law department. They will tell you whether a new survey is necessary.
- Typically a private surveyor is hired by the State. All surveys need to meet professional standards.
- Survey amendment and survey reviews entail additional fees. Factor all survey-related costs as part of your closing.
- Most land management sections maintain the final survey records; however, you may want to obtain a duplicate.

Mineral Rights

- Mineral rights can significantly complicate a project.
- Find out early who owns the mineral rights, and extraction, excavation, and royalties can be separated.
- Need to determine if surface mining on the property is “so remote as to be negligible” (as per Treas. Reg. §1.170A-14[g][4][i]).
 - This is the Internal Revenue Service standard for tax donation, but is typically the standard used by the Forest Legacy Program.
 - A geological survey of the property is typically completed to determine the likelihood of excavation.
- Treasury Regulations state that a tax deduction “will not be denied in the case of certain methods of mining that may have limited, localized impact on the real property but that are not irretrievably destructive of significant conservation interest.”

Environmental Assessment

- An environmental contamination assessment is needed to ensure that the property does not contain contamination.
- An EAS is not required in the FLP Guidelines unless 'scoping indicates extraordinary circumstances exist.' (section III 2)
- “The easement holder should consider a tiered approach when evaluating environmental risk” (Byers & Ponte, 2005)

Definitions (from Lands Terminology Desk Guide, USFS)

Land Survey –A survey made to retrace, establish, or reestablish land boundaries, performed by one authorized by State authority to do so; the process of determining boundaries and areas of tracts of land. The term cadastral survey is sometimes used to designate a land survey, but in this country its use should be restricted to the surveys of public lands of the United States (USPLS).

Survey (cadastral) -A survey relating to land boundaries and subdivisions, made to create units suitable for transfer or to define the limitations to title. The term “cadastral” is derived from “cadastre” meaning register of real property of a political subdivision with details of area, ownership, and value. The term cadastral survey is now used to designate the surveys of the public lands of the United States, including retracement surveys for the identification and resurveys for the restoration of property lines. The term can also be applied properly to corresponding surveys outside the public lands, although such surveys are usually termed land surveys through preference.

Section 1.12. Appraisals and Reviews

- Follow FLP 2003 Guidelines (pg. 19 and appendix H) and State requirements.
- A Forest Service senior review appraiser is available to answer any appraisal or review questions.
- You may use Forest Service appraisers or appropriately qualified private appraisal firms to complete the appraisal and the appraisal review.
- Appraisers must be State certified and preferably hold a senior-level professional designation from a sponsor organization of The Appraisal Foundation. They must comply with the Uniform Appraisal Standards for Federal Land Acquisitions, 2000, which is known as the “Yellow Book,” and the Uniform Appraisal Standards of Professional Appraisal Practices (USPAP).
- Ensure that all government and nongovernment appraisers and reviewers have completed Yellow Book training and have relevant work experience to competently complete the assignment.
- Schedule a prework meeting with the reviewer to discuss assignment issues and assist in the development of comprehensive and case-specific instructions to the appraiser.
- If using outside appraisers/review appraisers, you need to follow State requirements for contracting.
 - Selection is typically made according to State stipulations, which include cost, delivery date, and meeting minimum specifications.
 - Document how the appraiser/review appraiser met the minimum qualifications.
- All written instructions to the appraiser must be included in the appraisal report to ensure proper review.
- Supply appraiser with maps and a legal description; make sure the final appraisal has photos of comparable sales.
- The appraiser will need a copy of the final easement in order to correctly appraise remainder value.
 - If the easement language changed after the appraisal was completed, provide the updated language to the appraiser so they can determine if the appraisal needs to be updated.
- For easement acquisition, compensation is based on the difference between the market value of the larger parcel valued at highest and best use, and the market value of the remainder as encumbered valued at highest and best use.
- The intended use of the appraisal is for acquisition purposes pursuant to the Forest Legacy Program (FLP). Intended users of the appraisals include the State and Forest Service. The landowner should consult others for matters relating to the Internal Revenue Service.
- Notify the landowner in writing the appraised value of the land or interests in land that will be entered into the FLP. The agreed-upon price does not have to be the same as the appraised price, but the landowner must be notified of the appraised value. An amount up to the appraised value of the lands or interests in lands may be counted as either the Federal share or the non-Federal cost share.
- A new appraisal or “update” is necessary when there has been a change to the physical, legal characteristics of the property or market conditions have changed from when the appraisal was completed, or a change in the conservation easement language affects the value. “When an appraisal has been made any substantial period in advance of acquisition, the appraisal must be carefully reviewed and brought up to date (by the original appraiser) to reflect current market conditions.” (Yellow Book, D-13) You must go back to the appraiser with any change to the legal description/acres or the easement language to ensure that the appraisal will match the acquisition.
- The appraisal must have a technical review completed by an appropriately qualified government or nongovernment appraiser to determine compliance with the Yellow Book, USPAP, and appropriate written instructions. The review does not approve or concur with the value. Refer to the Yellow Book, C-1, C-2.

- You may (or may not) need to provide appraisal information to other parties if requested. Refer to your State law regarding “protected records.” In some States, appraisals are public after the project is completed and the easement purchased.

References/Additional Information

Uniform Appraisal Standards for Federal Land Acquisitions, (2000)
www.usdoj.gov/enrd/land-ack

Uniform Standards of Professional Appraisal Practice — Current copy can be found at
www.appraisalfoundation.org

Ken Daw, Forest Service Region 9, senior review appraiser 802-747-6741, kdaw@fs.fed.us

Section 1.13. Uniform Relocation Assistance and Real Property Acquisition

- Refers to Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended. This is the primary law relating to Federal or federally assisted real estate acquisition.
- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59) changes how the Uniform Relocation Act applies to easement programs. The section 1119(o) states “The requirements of the January 4, 2005, Federal Highway Administration, a final rule on the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970... shall not apply to the voluntary conservation easement activities of the Department of Agriculture or the Department of the Interior.”
- As a result, the Uniform Relocation Act now no longer applies to Forest Legacy Program projects.

References/Additional Information

U.S.C. Title 42, Chapter 61-Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs for Federal and Federally Assisted Programs

C.F.R. 23 Part 710 and 49 Part 24

You can access electronic versions of the U.S.C. and C.F.R. at <http://ecfr.gpoaccess.gov>

Section 1.14. Forest Stewardship Plans and Multi-resource Management Plans

- The FLP 2003 Guidelines (pg. 18) requires “...that the development of a Forest Stewardship Program (FSP) plan or multiresource management plan that has been approved by the landowner and the State forester or designee ... shall be prepared prior to the project closing.”
- These plans offer flexibility and management directives that are nearly impossible to place within a perpetual legal document like a conservation easement (CE) and the conservation objective of the CE.
- Early in the process, ensure that the landowner knows developing a plan is a requirement of the Forest Legacy Program (FLP).
- Always develop stewardship plans and multi-resource management plans based on landowner interests to improve/enhance the total forest environment.
- An example of the basic components of a stewardship plan is in example 3.9. Be sure to follow the FLP Standards and Guidelines for Non-Industrial Private Forests.
- Should include more than prescriptions of immediate and short-term work to be performed. Plans should adequately describe how forest stands, types, units, or areas will be managed *over a rotation* to achieve the goals and objectives of the landowners. This long-term approach suits the permanence of a working forest easement.

Helpful Tip: Remember to include anticipated rotation ages, intermediate treatments, and stand regeneration required to achieve landowner's objectives. The plan combined with the initial baseline documentation report may be the only measure by which an FLP property is monitored in the future- make it complete.

- Utilize staffers and other resource professionals to develop the plan and draw upon outside contractors as needed. Consult with members of participating agencies to determine the most expeditious and approach to getting an stewardship plan written.

References/Additional Information

Forest Stewardship Program-

- <http://www.fs.fed.us/spf/coop/programs/loa/fsp.shtml>
- *National Standards and Guidelines*
- *Planning for Forest Stewardship: A Desk Guide.*

Section 1.15. Closing and Associated Event

- The actual closing of the project is the day you, landowners and other partners actually finalize the deal.
- If the property is subject to a preexisting mortgage, there are additional considerations. Work with your real estate specialists to figure out the best approach.
- If a third party was involved, such as a land trust, they will most likely close with the landowner prior to you. Then immediately the closing takes place between the landowner and the State agency. This is referred to as a pass-through transaction. The land trust is responsible for preparing their documents (deed of transfer, option). The State agency is responsible for providing a final deed of conservation easement, baseline documentation, and any other legal documents (right of first refusal) for signature and recording.
- Prior to the closing date, obtain a copy of closing statement from your title company.
 - This should show all costs involved including the cost of the acquisition and is used to transfer the Federal funds to your State for payment.
 - Ensure you have set up a method for transferring funds. The Forest Legacy Program will not pay the third party (landowner) directly. Many months in advance of the closing, you must determine the exact procedure that will be used to get the money from the Federal grant to your landowner. In some States, funding that is transferred to a State agency becomes part of the general funding and must be passed through State legislation to be spent — you don't want to deal with this. Talk with your financial experts and determine how the funding path will be determined.

**** Remember**** Ensure that all publicity documents have accurate information, identifies the FLP and gives proper credit to the Forest Service.

Closing Checklist

- Who pays closing costs? (State agency, partner, landowner)
- Who pays the title insurance premium?
- Assemble all final documents
- Verify closing costs on statement
- Ensure that funding has been placed in escrow or check is available on day of closing
- (see Part 3, Examples 3.10 and 3.11)

Associated Event

- You may want to schedule some type of celebration and press event. It is great to celebrate a closing, but do not use FLP grant funding for this event. You will need to arrange for your partners to fund such a celebration.

Section 1.16. Grants

- The Forest Legacy Program (FLP) is a land acquisition program accomplished through Federal grants to States. All Federal grant laws and regulations apply to these grants; take care with them.
- Always work closely with your Forest Service region/Northeastern Area/International Institute of Tropical Forestry (FS region/Area/IITF) FLP managers. They oversee your grants and FLP budget. Work with your State grants officer and keep them informed as they interact with the Federal grant award officer while you interact with the Federal program manager.
- It is required that you have one grant per project, and one grant for administrative costs for each fiscal year. The associated cost-share match of 25 percent applies to each of those grants.
- The grant period is 2 years; however, it may be extended up to 5 years. Follow the procedure from your FS region/Area/IITF office if extension is needed. (See FLP 2003 Guidelines, pg 22). A long history of extensions and unfinished projects will harm your chances for future FLP funding.
- You cannot accrue cost-share match outside of the grant period- before or after.
- You will need to apply your grant money as soon as it is available. Be sure to inform landowners and project partners that funding will not be available until after the appropriations bill is signed, which usually happens in the spring.
- You can apply for funds in advance of closing if you know the exact amount needed and work with your grants officer to complete a Standard Form 270. Otherwise all payments are made on a reimbursable basis to the States.
- Gain an understanding of “allowable costs.” Basically any cost the Federal Government would have incurred in the transaction is allowed as a cost for the grant, either to be paid with the Federal money, or to count as the cost share.
- Take a grant workshop — the grant process can be overwhelming at first, and it helps to get advice and instruction from others.

References/Additional Information

FLP 2003 Guidelines for complete grant information (sections X-XIII and Part 2 section I).

Grants and Agreements: [www//whitehouse.gov/omb/grants](http://www.whitehouse.gov/omb/grants) [www//Grants.Gov](http://www.Grants.Gov)

OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments
(<http://www.whitehouse.gov/OMB/circulars/a087/a087-all.html>)

Section 1.17. Recordkeeping

- Check your State requirements.
- Develop a standard list of project documents and where they are kept (State office versus field office versus regional office). Specify who gets originals versus copies. Stick with your recordkeeping plan. (See Part 3, Example 12)
- Keep very complete records in a safe place. You will most likely be audited by State or Federal officials at some time — have good records on file.
- Coordinate with your Forest Service region/Northeastern Area/International Institute of Tropical Forestry office; some regions may want some records kept on their site.
- Purchase a fireproof/fire-retardant safe for your recorded deeds and originals. Check the FLP 2003 Guidelines appendix G for recommended items in this file. You may have an extensive “working file” that does not need to be in this secure site. Store those records elsewhere.
- Remember to keep your permanent file up to date with annual monitor records, changes of ownership, or other changes to the property.
- Consider using the Erler’s LandSteward database software program. It is designed to organize, store and access conservation easement projects and stewardship data and is easy to use.
- www.lta.org/resources/landsteward.htm

References/Additional Information

Byers & Ponte, (2005). *The Conservation Easement Handbook*,

Section 1.18. Cost Sharing

The Cooperative Forestry Assistance Act of 1978 states “To the extent practicable, the Federal share of the total program costs shall not exceed 75 percent, including any in-kind contributions.” Work with the Forest Service to be sure all allowable costs are captured to meet the non-Federal match. If a grant cannot meet the 25 percent cost share, provide documentation immediately to the Forest Service quoting this part of the law and explaining why the match was not met.

Recent Forest Legacy Program (FLP) appropriations language, including fiscal year 2006, states “Each Forest Legacy grant shall be for a specific project or set of specific tasks. Project grants are required to demonstrate that 25 percent of the total value of the project is comprised of a non-Federal cost share.”

- This cost-share requirement applies to both project funds and FLP administrative funds, including any funds the State provides to nongovernmental organizations that help implement FLP.
- To ensure that programwide cost-share goals are met, each project budget must include a minimum non-Federal contribution of 25 percent. That share is calculated as:

$$(\text{Federal FLP share}) \times (0.333) = \text{the minimum non-Federal contribution}$$

or

$$(\text{total project costs}) \times (0.25) = \text{the minimum non-Federal contribution}$$

- Due to the fact that the FLP will often fund only a tract or two under a project this general policy has applied to funded tracts in any funding year. Cost-share match is determined on a grant-by-grant basis.
- FLP 2003 Guidelines has the general direction for cost sharing in section XIII “Cost Share,” as in the Forest Legacy Program Implementation Guidelines published in 2003 (pg. 16) and appendix D “Examples of Cost Share Calculations” (pg. 32).
- If you are purchasing another parcel of conservation land as your non-Federal match, you need to ensure that all eight conditions required in the FLP 2003 Guidelines (pg. 17) are followed. Also non-Federal match properties need to be documented in the Forest Legacy Information Service (FLIS) as a separate tract (use the same funding fiscal year as the FLP funded tract), and in the grant narrative for that project (see Part 2, Section 2.7).
- If the project also includes other Federal money, this money cannot be used to match FLP dollars. In addition, the cost-share dollars for the other Federal money cannot be the same dollars that FLP is matched with. No double-dipping non-Federal match.
- It is very important to work with all your partners on planning your total budget for each project and tract. If the plan is to do some of the due diligence work on transaction costs using a partner, make sure you have that in the budget as match or that you plan to pay them out of Federal funds to do the work needed.

Helpful Hints

1. If your landowner is planning a donation, try to get a commitment letter from them or a purchase agreement through your land trust partner. This will allow you to secure the match and refer to it in your FLIS writeup.
2. Remember that any cost-share match accrued must be used during the grant period. It cannot be carried over to another project or administrative grant nor can cost incurred prior to the grant be included in match.

References/Additional Information

USDA Forest Service. 2003. *Forest Legacy Program Implementation Guidelines*, section XIII (pg. 16) and appendix D “Examples of Cost Share Calculations” (pg. 32).

OMB Circular A-87 Cost Principle for State, Local, and Indian Tribal Governments
(<http://www.whitehouse.gov/OMB/circulars/a087/a087-all.html>)

Cooperative Forestry Assistance Act, Title XII. Forest Stewardship Act of 1990, Section 1217, Forest Legacy Program

Part 2. Background Material

Section 2.1. Forest Legacy Program Authorization

The Forest Legacy Program is authorized by the Cooperative Forestry Assistance Act (CFAA) of 1978 [16 U.S.C. 2101 et. seq.], as amended by the 1990 Farm Bill [Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624:104 stat. 3359; 16 U.S.C. 2103c)].

The FLP section of the CFAA was amended by the 1996 Farm Bill [Federal Agricultural Improvement and Reform Act of 1996; Public Law 104-127; Title III - Conservation; Subtitle G - Forestry; Section 374, Optional State Grants for Forest Legacy Program]

Program Authorization Language

SEC. 7. Forest Legacy Program. [16 U.S.C. 2103C]

- (a) **Establishment and Purpose.** The Secretary shall establish a program, to be known as the Forest Legacy Program, in cooperation with appropriate State, regional, and other units of government for the purposes of ascertaining and protecting environmentally important forest areas that are threatened by conversion to nonforest uses and, through the use of conservation easements and other mechanisms, for promoting forest land protection and other conservation opportunities. Such purposes shall also include the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values.
- (b) **State and Regional Forest Legacy Programs.** The Secretary shall exercise the authority under subsection (a) in conjunction with State or regional programs that the Secretary deems consistent with this section.
- (c) **Interests in Land.** In addition to the authorities granted under section 6 of the Act of March 1, 1911 (16 U.S.C. 515), and section 11(a) of the Department of Agriculture Organic Act of 1956 (7 U.S.C. 428a(a)), the Secretary may acquire from willing landowners lands and interests therein, including conservation easements and rights of public access, for Forest Legacy Program purposes. The Secretary shall not acquire conservation easements with title held in common ownership with any other entity.
- (d) **Implementation**
 - (1) **In General.** Lands and interests therein acquired under subsection (c) may be held in perpetuity for program and easement administration purposes as the Secretary may provide. In administering lands and interests therein under the program, the Secretary shall identify the environmental values to be protected by entry of the lands into the program, management activities which are planned and the manner in which they may affect the values identified, and obtain from the landowner other information determined appropriate for administration and management purposes.
 - (2) **Initial Programs.** Not later than November 28, 1991, the Secretary shall establish a regional program in furtherance of the Northern Forest Lands Study in the States of New York, New

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

- (e) **Eligibility.** Not later than November 28, 1991, and in consultation with State Forest Stewardship Coordinating Committees established under section 19(b) and similar regional organizations, the Secretary shall establish eligibility criteria for the designation of forest areas from which lands may be entered into the Forest Legacy Program and subsequently select such appropriate areas. To be eligible, such areas shall have significant environmental values or shall be threatened by present or future conversion to nonforest uses. Of land proposed to be included in the Forest Legacy Program, the Secretary shall give priority to lands which can be effectively protected and managed, and which have important scenic or recreational values; riparian areas; fish and wildlife values, including threatened and endangered species; or other ecological values.
- (f) **Application.** For areas included in the Forest Legacy Program, an owner of lands or interests in lands who wishes to participate may prepare and submit an application at such time in such form and containing such information as the Secretary may prescribe. The Secretary shall give reasonable advance notice for the submission of all applications to the State forester, equivalent State official, or other appropriate State or regional natural resource management agency. If applications exceed the ability of the Secretary to fund them, priority shall be given to those forest areas having the greatest need for protection pursuant to the criteria described in subsection (e).
- (g) **State Consent.** Where a State has not approved the acquisition of land under section 6 of the Act of March 1, 1911 (16 U.S.C. 515), the Secretary shall not acquire lands or interests therein under authority granted by this section outside an area of that State designated as a part of a program established under subsection (b).
- (h) ***Forest Management Activities***
 - (1) **In General.** Conservation easements or deed reservations acquired or reserved pursuant to this section may allow forest management activities, including timber management, on areas entered in the Forest Legacy Program insofar as the Secretary deems such activities consistent with the purposes of this section.
 - (2) **Assignment of Responsibilities.** For Forest Legacy Program areas, the Secretary may delegate or assign management and enforcement responsibilities over federally owned lands and interests in lands only to another governmental entity.
- (i) **Duties of Owners.** Under the terms of a conservation easement or other property interest acquired under subsection (b), the landowner shall be required to manage property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program and shall not convert such property to other uses. Hunting, fishing, hiking, and similar recreational uses shall not be considered inconsistent with the purposes of this program.
- (j) ***Compensation and Cost Sharing***
 - (1) **Compensation.** The Secretary shall pay the fair market value of any property interest acquired under this section. Payments under this section shall be in accordance with Federal appraisal and acquisition standards and procedures.
 - (2) **Cost Sharing.** In accordance with terms and conditions that the Secretary shall prescribe, costs for the acquisition of lands or interests therein or project costs shall be shared among participating entities including regional organizations, State and other governmental units,

landowners, corporations, or private organizations. Such costs may include, but are not limited to, those associated with planning, administration, property acquisition, and property management. To the extent practicable, the Federal share of total program costs shall not exceed 75 percent, including any in-kind contribution.

(k) *Easements*

- (1) **Reserved Interest Deeds.** As used in this section, the term “conservation easement” includes an easement utilizing a reserved interest deed where the grantee acquires all rights, title, and interests in a property, except those rights, title, and interests that may run with the land that are expressly reserved by a grantor.
- (2) **Prohibitions on Limitations.** Notwithstanding any provision of State law, no conservation easement held by the United States or its successors or assigns under this section shall be limited in duration or scope or be defeasible by—
 - (A) the conservation easement being in gross or appurtenant;
 - (B) the management of the conservation easement having been delegated or assigned to a non-Federal entity;
 - (C) any requirement under State law for re-recording or renewal of the easement; or
 - (D) any future disestablishment of a Forest Legacy Program area or other Federal project for which the conservation easement was originally acquired.
- (3) **Construction.** Notwithstanding any provision of State law, conservation easements shall be construed to effect the Federal purposes for which they were acquired and, in interpreting their terms, there shall be no presumption favoring the conservation easement holder or fee owner.

(l) *Optional State Grants*

- (1) **In General.** The Secretary shall, at the request of a participating State, provide a grant to the State to carry out the Forest Legacy Program in the State.
- (2) **Administration.** If a State elects to receive a grant under this subsection—
 - (A) the Secretary shall use a portion of the funds made available under subsection (m), as determined by the Secretary, to provide a grant to the State; and
 - (B) the State shall use the grant to carry out the Forest Legacy Program in the State, including the acquisition by the State of lands and interests in lands.

(m) **Appropriation.** There are authorized to be appropriated such sums as may be necessary to carry out this section.

Section 2.2. FLP Implementation Guidelines

- The Forest Legacy Program implementation guidelines were completed on June 30, 2003.
 - This document was an update of the 1996 FLP guidelines.
- A team of Forest Service regional and Washington Office representatives and State lead agency representatives completed the FLP 2003 Guidelines.
- The FLP 2003 Guidelines is located at http://www.fs.fed.us/spf/coop/library/flp_guidelines.pdf
- The FLP 2003 Guidelines include:
 - Program authority, purpose, and delegations of authority
 - Description of terms
 - Assessment of Need (AON) development process and components
 - Forest Legacy Area criteria
 - AON and amendment approval process
 - Project selection process
 - Program funding categories
 - Allocation of funds
 - Redirection and reprogramming guidelines
 - Cost-share requirements
 - Acquisition and appraisal requirements
 - Conservation easement (CE) monitoring, management, recordkeeping, and enforcement
 - Landowner and land trust participation
 - State grant program and Federal acquisition option
- Appendixes include-
 - Project selection calendar
 - Forest Service map
 - Office of Management and Budget circulars and other related regulations
 - Examples of cost-share calculations
 - Information to facilitate landowner participation
 - Sample content of a Forest Stewardship Plan
 - Real estate recordkeeping
 - Qualifications of appraiser and review appraiser
 - Requirements and suggestions for CEs and deeds
 - Sample content for baseline documentation
 - Sample graphics and signs

Section 2.3. Forest Service Organization and Role

- The Forest Service's State and Private Forestry has a two-tier structure.
 1. Washington Office refers to the Forest Service staff located within the Washington, DC office.
 - Oversees national budget, including national redirection and reprogramming.
 - Coordinates with Congress during appropriations development.
 - Primary link with Office of Management and Budget.
 - Oversees policy development.
 - Provides leadership and oversight on national program issues.
 - Coordinates with national partners.
 2. FS region/Area/IITF refers to the field units of the Forest Service responsible for Forest Legacy Program management and oversight within the Forest Service regions, Northeastern Area or International Institute of Tropical Forestry (IITF).
 - Oversees regional budget, including administrative funds and regional redirection.
 - Provides program implementation and oversight, including appraisals, conservation easements, and assessment of needs/amendments.
 - Primary link between national program issues and State issues and concerns.
 - Issues and monitors grants to States.
 - Coordinates with State and regional partners.
 - Conducts State program reviews.
- List of the Forest Service regions/Area/IITF FLP Coordinators is located at http://www.fs.fed.us/spf/coop/library/flp_all_contacts.pdf

Section 2.4. FLP Project Selection Process

The purpose of the selection process is to develop a prioritized national project list for consideration in the President's budget for the upcoming fiscal year. FLP 2003 Guidelines (pgs. 12-14) describes the project selection process.

- Forest Legacy Program project applications are accepted by the State lead agency as outlined in the State's Assessment of Need (AON).
 - The State Forest Stewardship Coordinating Committee 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 Forest Service region/Northeastern Area/International Institute of Tropical Forestry (FS region/Area/IITF) for funding consideration.
 - Only projects submitted through this process will be deemed eligible.
- Project information needs to be entered into the Forest Legacy Information System prior to the required date (will vary each year, but will be specified well in advance).
- FS region/Area/IITF submit projects to the Washington Office (WO) for funding consideration.
- The WO will develop a prioritized national project list by convening a panel, as outlined in FLP 2003 Guidelines (pg 13). There are three purposes of the panel; (1) ensure that all projects meet congressional and administration direction; (2) ensure that projects meet national program goals; and (3) develop a national list of ranked projects.
 - The composition of the panel will be developed annually in consultation between the State lead agencies and the Forest Service, and will be representative of geographic regions.
 - Project evaluation and ranking is based on the national core criteria (importance, threatened, and strategic). In addition, other items such as project readiness, State priority, and State caseload and backlog will also be considered.
- Each fiscal year, the WO will submit a project list to the Office of Management and Budget for funding consideration in the President's budget.
 - Once the President's budget has been completed, the WO will notify the appropriate House and Senate committees and subcommittees of the recommended projects for the upcoming fiscal year (see Part 2, Section 2.5).

References/Additional Information

FLP 2003 Guidelines (pgs. 12-14)

Section 2.5. Federal Appropriations Process

- President's budget request is submitted to Congress the first Monday in February.
 - The budget contains a list of recommended Forest Legacy Program (FLP) projects with related funding levels (see Part 2, Section 2.4).
 - For information about the House and Senate Appropriations Committees
 - House- <http://appropriations.house.gov/>
 - Senate- <http://appropriations.senate.gov/>
- Soon after the President's budget is released, the Washington Office (WO) staff mail briefing sheets for each requested project to House and Senate congressional members for that project area.
 - It is critical that Forest Legacy Information System (FLIS) (see Part 2, Section 2.7) project information is up to date, without errors, and supports the President's budget.
 - It is essential that the project's congressional districts are correct in FLIS.
- The Forest Service budget is included in the Interior and Other Related Agencies Subcommittee (Senate has 12 subcommittees and House has 10).
 - House- <http://appropriations.house.gov/index.cfm?FuseAction=AboutTheCommittee.Subcommittees&SubcommitteeId=10>
 - Senate- <http://appropriations.senate.gov/subcommittees/interior/topics.cfm?code=interior>
- WO staff provide project briefing sheets to House and Senate Appropriations Subcommittee staff.
 - WO has periodic communications and meetings with staff to answer questions and apprise them of project changes such as failed projects or name change.
 - Throughout the process, WO is always supporting the President's budget request.
- It is critical that the State lead agency and partners inform State congressional delegation about FLP projects that are included in the President's request.
 - Many congressional members prepare funding requests for the appropriate subcommittees for consideration. Oftentimes, FLP projects are included in these requests.
- House and Senate subcommittees "mark up" the budget; the House conducts their mark up first. The Committee then forwards the appropriations bill, with a companion report, to the full chamber for a vote.
- Once the House and Senate each pass the bill, a conference is formed to resolve any differences between the two bills. Once a conference bill is developed, it is then voted on in each chamber.
 - To track status of appropriations bills- <http://thomas.loc.gov/>
- The final appropriations law includes FLP funding level and may include language that provides FLP direction. In addition, an accompanying conference report is developed that includes the list of funded projects.
- With the Federal fiscal year ending September 30th, Congress passes the appropriation bill(s) by then, or passes a continuing resolution. Recently, Congress has passed an omnibus appropriations bill, which combined several of the appropriations bills.

References/Additional Information

<http://appropriations.senate.gov/budgetprocess/budgetprocess.htm>

<http://appropriations.house.gov/files/Primer2004.pdf>

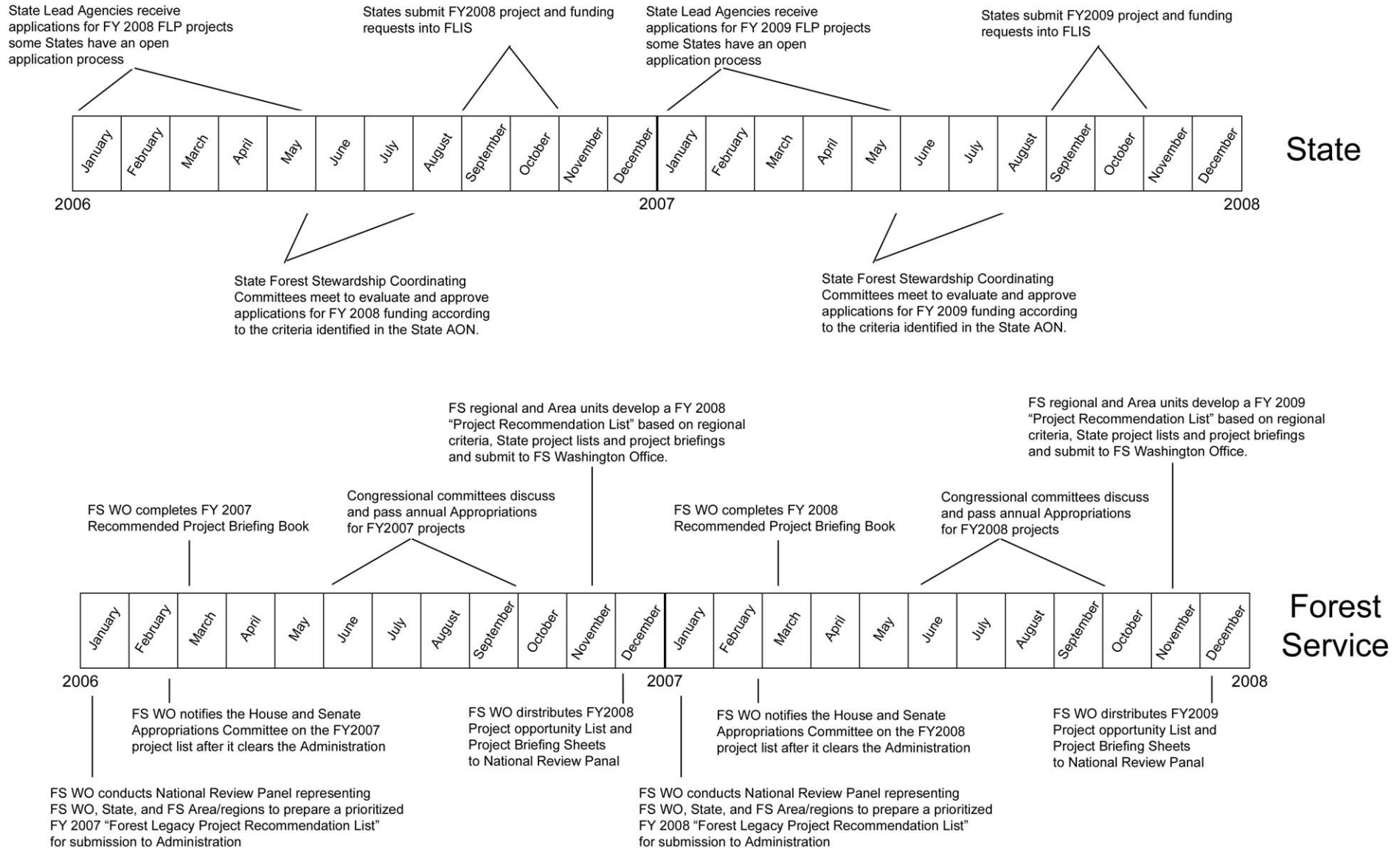
<http://www.fedaccess.com/pdf-files/budget-process-explanation.pdf>

<http://www.senate.gov/reference/resources/pdf/97-684.pdf>

Section 2.6. Timeline

- The process takes a while.
 - Make sure your landowners and partners know that project funding and completion is a lengthy process.
 - If the project is under extremely imminent threat, the Forest Legacy Program might not be the right funding source.
- The timeframe between project identification and funding is likely to take 1 to 3 years, depending on the State's project identification and selection process.
- The timeframe between funding to project closing is likely to take an additional 2 years.

Forest Legacy Program State and Forest Service Timelines



Section 2.7. Forest Legacy Information System

It is critical that all project information is up to date and accurate because project briefing sheets and reports are printed throughout the year. The Forest Legacy Information System (FLIS) is the database used to store Forest Legacy Program project information and tract program accomplishments. FLIS allows users to obtain real-time project and program information. FLIS facilitates information exchange among the Washington Office (WO), Forest Service region/Northeastern Area/International Institute of Tropical Forestry, and States.

- FLIS can be accessed at <http://spfnic.fs.fed.us/nicportal/default.cfm?action=Login>
- FLIS has a desk user guide (under the help menu) to help answer questions you might have: http://spfnic.fs.fed.us/legacy/help/flis_intro.htm
- Several reports are available through FLIS, including:
 - Project briefing sheets and detailed reports.
 - Project summaries by State, including all funded projects and all tracts within a project.
 - Program accomplishments by State or by fiscal year.
 - Performance Measurement Accountability System reports.
 - Funded but not yet completed tracts.
- The system is designed to be a helpful tracking tool of projects and programs for both the Forest Service and the States.
- Information from FLIS is used for a variety of things including
 - Reporting program accomplishments to Congress, the White House, U.S. Department of Agriculture, and other decision makers.
 - Responding to congressional questions such as identifying unspent program funds, status of a specific project, and program funding by State.
 - Providing background information to agency leaders regarding a specific project or program within a State.
 - Responding to a constituent question regarding a project or State program.
- Recommended dates for updating project information, based on program needs from the WO:
 - February 14- prior to preparing congressional packages
 - October 15- obtaining end of the year accomplishments
 - December 1- preparing national selection panel packages, including funding backlog

***** Bottom line is to update FLIS whenever it does not accurately represent the current project description. *****

Part 3- Examples

3.1- Landowner Application (Example from Rhode Island)

State of Rhode Island

Department of Environmental Management

Division of Forest Environment

1037 Hartford Pike

North Scituate, RI 02857 (401)647-3367 Fax(401)647-3590 E-mail

riforestry@edgenet.net

IMPORTANT – PLEASE READ!

Thank-you for considering the Forest Legacy Program for the protection of your forested lands. Competition in the program is extremely keen, and funding limited. Projects that make it through Rhode Island’s evaluation and ranking process will be forwarded to the Forest Service and entered into a regional, then national evaluation process. Each year only one or two projects from Rhode Island may be funded and become a reality.

Patience is the most important virtue that applicants can possess as their application goes through this administrative process. It is not unusual for a project to take over 18 months from the time of being ranked on the state level to the scheduled closing. The more work that is completed ahead of time, the quicker a closing can be expected.

There are many aspects to being selected and ranked high enough to be funded. One aspect, and probably the most important, is the quality of the forest resources of the tract. The evaluation process investigates the quality of the fish & wildlife habitat, if there are resources of cultural, historic, or scenic significance, and whether or not conservation of the parcel contributes to the protection of public drinking water supply values. Each of these values is a reflection of the parcel and there is little if anything that a landowner can do to improve the attractiveness of the project based on this criteria.

Other factors are within the property owner’s control, public access being one. Many taxpayers question why public dollars are spent to purchase easements if public access is not allowed. Arguments can be made both for and against the right of the public to access private lands. However, in those instances where it is appropriate, the selection of a potential project could hinge on whether or not the public will be granted access. It is important to note that how much public access is granted, where, and at which times, is always negotiable. Remember, it is a “willing seller” basis and condemnation of land is *never* used.

Also within the landowner's control is the sale price of the interests acquired. In every case, the landowner is informed of the fair market value of the interests that are being bought/sold. The value is determined by federal appraisal standards. Projects that are available at below the established fair market value are given special consideration. Applicants should be aware of the current fair market value of their parcel.

Also considered in the evaluation of a proposed project is the amount of support for the protection of the parcel, as evidenced by written letters from governmental agencies, individuals, or non-profit organizations. Examples would be local, state, or regional land trusts, the local conservation commission and planning department, etc., and state or local representatives and/or congressman. The level of support is also considered. Has the supporter agreed to commit funds for the project, or to have the appraisal, survey, or management plan paid for? Each of these criteria is considered and up to the applicant to provide.

Another aspect given careful consideration is the potential of conversion of the land to non-forest uses. It is up to the property owner, through the answers provided to the questions in the application to establish the threat for the potential conversion.

Most applicants will not be aware of all the organizations, agencies, plans, and strategies that may be applicable to conserving their parcel. That is why it is important to talk to the local Town Planning Department and Conservation Commission. In addition, the Forest Legacy Committee will not only evaluate and prioritize potential projects, but also use their expertise and diverse knowledge to add to the quality of the project should it be selected for funding consideration.

So, what makes a good application? Without a doubt it's the amount and quality of the information that you provide about your land, how it fits into local, state, and/or regional land protection strategies, what is the threat of its conversion, who supports its protection, and what is that level of support. Most of this information requires the applicant to do a lot of legwork, talking to local conservation groups, and town officials, and really thinking about the answers posed in the application. Take your time, be thorough, include as much supporting evidence as you can get your hands on. Most of all be patient and don't get discouraged if your parcel does not rank at the top. You can amend your application to make it more desirable, add more supporters if they're willing, and always re-apply!

APPLICANT INFORMATION:

Landowner's Name:

Mailing Address:

Daytime Telephone Number:

Contact Person:

Mailing Address:

Daytime Telephone Number:

PROPERTY INFORMATION (Contact Local Zoning Official When Necessary)

Town where property is located:

Property Location:

Assessor's Plat(s) and Lot(s):

Deed Reference (book and page number):

Number on Nearest Utility Pole:

Minimum Lot Size Minimum Road Frontage (per lot)

Property is currently zoned: Residential Commercial Industrial

Current tax valuation: If you have a recent appraisal attach if available

Total Total Offered

Forested Acres

Non-Forested Acres

IF NEEDED USE ADDITIONAL SHEETS TO ANSWER THESE QUESTIONS

TYPE OF ACQUISITION

All transactions are based on the concept of “willing seller, willing buyer”. There is **no condemnation** of land.

Landowners wishing to be considered for the Forest Legacy Program must decide what type of sales agreement they want to enter into with the State. All land comes with certain rights, subject to federal, state, and local laws and regulations - the underlying title to the land, the right to develop the property, the right to harvest timber, to allow or deny public access, etc., are but a few. Together these rights can be thought of as a “bundle of rights”.

In a *fee title* sale, the State, as the buyer, purchases the parcel outright, including all the rights. As this option removes land from private ownership and is generally more expensive than the other option, it is not a preferred alternative by the State. Fee simple purchases will only be considered in those cases where the parcel contains outstanding resource values

In a *conservation easement* sale, restrictions on the use of the land are attached to the property deed in the form of a “Deed to Conservation”. This legally binding document is registered in the town land evidence records and, in essence, transfers rights from the landowner to the buyer (the State). The landowner is then paid for the loss in value of the property due to the restrictions. While commonly known as “buying the development rights” from a landowner, there are other rights within the “bundle of rights” that may be impacted, and therefore are compensated for. In this sale the landowner keeps title to the land, which can then be sold, transferred, or held. The deed restrictions are in perpetuity and are binding upon subsequent owners.

At a minimum the State is interested in purchasing the development rights, but is also interested in public access rights, should the landowner agree. Place a check mark or an “X” on the appropriate line of interests you are interested in selling.

I am interested in selling my property outright (fee title)._____

For a Conservation Easement sale which of the following are you interested in selling:

Development Rights (**Yes/No/Maybe**)

The right to harvest timber and/or other wood products* (**Yes/No/Maybe**)

Public Access for Recreation(**Yes/No/Maybe**)

Grazing Rights (**Yes/No/Maybe**)

Farming Rights (**Yes/No/Maybe**)

* If the landowner decides to retain the right to harvest timber and/or other wood products, a written forest management plan provided by the landowner and approved by the state, will be required **prior to scheduling the closing**. The plan needs to be updated by the landowner at least every ten years.

FINANCIAL INFORMATION

State the fair market value of the interests to be enrolled in the Forest Legacy Program, and the method used to determine that value (appraisal, landowner estimate, tax rolls, etc.). Attach appraisal (a valid appraisal meets the “Uniform Appraisal Standards for Federal Land Acquisitions”. *Other appraisal methods are not valid*).

What is/are the estimated sale price(s) of the interests being offered?

State the value of the landowner(s) contribution, if any, either in donated value or in-kind services.

Is there a third party interested in participating in the acquisition, management, and/or monitoring of the terms of the conservation easement? If yes, attach a letter from that party describing their level of commitment. The commitment can range from such pre-acquisition work as paying for the title search or appraisal, or by providing funds for the acquisition, or by agreeing to manage the property for the state, or to monitor compliance with the terms of the conservation easement. (Note: the State has final say on third party participation).

QUESTIONS (Attach extra sheets if necessary)

1. Describe your long-term goals and objectives for this parcel:

2. Describe the "Traditional" use(s) of this forest land.

3. One of the goals of the Forest Legacy Program is to prevent forest fragmentation and to maintain viable working forests and forest systems. How will the acquisition of a conservation easement on your property address these issues?

4. (Circle one) Is your parcel identified either locally, or in the RI Landscape Inventory as: "Distinctive" "Noteworthy" "Uncommon" Other _____

5. Is it situated along a road either designated locally or by the state Department of Transportation as scenic? _____ YES _____ NO

6. Does it include locally important panoramic views or exceptional short views as demonstrated in local or state resource planning guides? If so, describe, and state source.

7. What public recreational opportunities will be provided/enhanced by this acquisition? Will you be allowing some form of public access to the property?

8. How will this acquisition further public drinking water supply values?

9. Does your parcel contain any significant fish and wildlife habitat values?

10. Are you aware of any cultural/historic values?

Please answer the following question fully and carefully. Include as much pertinent personal information as you are comfortable giving, such as financial need, health considerations, family situations, etc.

11. What, in your opinion, is the "Threat of Conversion to Non-Forest Use" of the parcel proposed for enrollment in the Forest Legacy Program? Be specific.

12. Often the Forest Stewardship Plan calls for the harvesting of forest resources. If that were the case for your parcel, would you be willing to do so, or allow others to do so on your behalf? What about future generations? What is your opinion regarding timber harvesting?

**If you are currently following a written forest management plan
PLEASE PROVIDE A COPY.**

CONSISTENCY WITH OTHER PLANNING EFFORTS

(**IMPORTANT:** Contact Local Zoning Official, Local Land Trust, and/or Other Land Use Planning Group)

How is the sale of a deed to conservation to this property consistent with your local land use comprehensive plan, or other local conservation efforts? How will it add to the conservation values of nearby protected lands? Cite references.

LIENS AND ENCUMBRANCES

List any and all liens, mortgages, and encumbrances on the property proposed for enrollment in the Forest Legacy Program. Examples: utility easements, public rights of way, water flowage or use restrictions, septic system or water easements, deed restrictions, tax liens, etc.

LANDOWNER COMMENTS

FOREST LEGACY PROGRAM - Checklist

With your Forest Legacy Program application package, please submit four applications (one original and three copies) of the following for each non-contiguous parcel:

- _____ Completed application (incomplete applications will not be considered).
- _____ Signed consent agreement.
- _____ Map (State Highway, USGS Topographic, Street Atlas, e.g.) showing location of parcel in relation to nearest major town roads, as well as proximity to already protected open space, public or private, or other significant ecological feature or item that the Forest Legacy Committee should be aware of when considering your application.
- _____ Legal description if available, and/or copy of deed.
- _____ List of any known encumbrances or liens existing on the property including, but not limited to contracts, leases, or outstanding rights not of record.
- _____ A plan-map of the property.

Plan-map Requirements:

To approximate scale (shown), North arrow, dated, and titled

Identifying the area to be included in the Forest Legacy Program, and the area(s) to be excluded from the program (if any), with approximate acreage shown.

Depicting forested and non-forested areas such as fields or gravel pits, approximate location of wetlands, bogs, ponds, marshes, etc., dams, dumps, waste disposal sites, wells, roads (labeled), trails, and any other structures or permanent improvements, etc., or any other feature that the Forest Legacy Subcommittee may find useful in the evaluation of your application. Optional but recommended materials: (Include as many as possible)

Letters of support for the project, including commitment of funds (if applicable), from:

- _____ Local Land Trust and/or Conservation Commission
- _____ Town Official(s) (Planning and/or Zoning Board, Mayor, Town Council President, etc.)
- _____ Local Representative
- _____ State Conservation Group or Governmental Organization (e.g. Local Water Supply Board, The Audubon Society of Rhode Island, etc.).
- _____ Congressional Representative (Senator, Representative, or both)
- _____ Regional Conservation Group or Governmental Agency (The Nature Conservancy, Environmental Protection Agency, etc.).

*All materials become the property of the State of Rhode Island and are non-returnable.

3.2- SFSCC Project Prioritization (Example from Indiana)

2002 Indiana's Forest Legacy Parcel Evaluation – *Self Scoring* -PLEASE CIRCLE POINTS SCORED

A. Watershed Protection and Water Quality Values: (70 points maximum)

- 15 pts * Parcel has over 1,000 feet of perennial waterway shoreline, **or**
- 10 pts * Parcel has 300'-1,000' perennial waterway shoreline, **or**
- 5 pts * Parcel is situated on a river or perennial stream, but less than 300' frontage or more than 1,000' on a major intermittent stream
- 5 pts Parcel includes 100 year floodplain at least 100 feet wide
- 15 pts Parcel is within a regional drinking water aquifer area or within 1 mile of a public water supply lake.
Or, 10 pts Parcel drains into a public water supply lake.
- 10 pts Parcel is adjacent to identified permanent watershed protection area or within a priority watershed.
- 15 pts Parcel contains a wetland larger than 2 acres in size
- 10 pts Parcel drains into a natural wetland larger than 2 acres within 1/2 mile

Your score _____

B. Public Recreational Values: (40 points maximum)

- 10 pts Proposed parcel has access to a public water body, **or**
- 5 pts Adjoining parcel has water based recreation open to the public
- 5 pts Proposed parcel has access to a public trail system, **or**
- 2 pts Adjoining parcel has trails open to the public
- 5 pts Proposed parcel has other outdoor recreation opportunities open to the public, **or**
- 2 pts Adjoining parcel has other outdoor recreation open to the public
- 15 pts Parcel adjoins public lands
- 5 pts Parcel adjoins protected private lands or is within 1 mile of public lands

Your Score _____

C. Scenic Resource Values: (35 points maximum)

- 20 pts Parcel has at least 1,000 ' frontage on a designated scenic route, **or**
- 15 pts Parcel has 1-1,000' frontage on a designated scenic route
- 15 pts Parcel is part of an important, regionally known scenic view, **or**
- 10 pts Views of or from parcel are well known, locally important scenic views

Your Score _____

D. Cultural or Historical Values: (35 points maximum)

- 15 pts Parcel contains an historic forestry site (e.g. grist/sawmill) in good to excellent condition, **or**
- 5 pts Condition of historic forestry site is fair to poor
- 20 pts Site contains other documented historic sites in good to excellent condition, **or**
- 10 pts Site contains one other documented historic site in fair condition, **or**
- 10 pts No historic sites documented, but there is a high probability of significant sites being present

Your Score _____

E. Traditional Forest Values: (100 points maximum)

- 30 pts Parcel grows great timber (>80% of area has site index >80' for Red Oak or 95' for Tulip Tree), **or**
- 15 pts Parcel grows fair/good timber (Average site index >70' for Red Oak or 85' for Tulip Tree)

- 20 pts** At least 85% of the parcel can be accessed by 4-wheel drive tractor or log skidder, **or**
 - 10 pts** 65-85% of the parcel is accessible by tractor
- 10 pts** Parcel has been actively and well managed by the current owner, **or**
 - 5 pts** Parcel has an existing forest stewardship plan, but has not been actively managed the past 10 years
- 5 pts** Parcel is enrolled in the Classified Forest or Wildlife Habitat Program
- 10 pts** Parcel is relatively free of invasive and exotic species
- 15 pts** Parcel is greater than 160 acres in size. Or, greater than 40 acres in sparsely forested areas (<10% forest)
- 10 pts** Parcel has established research plots or educational facilities

Your Score_____

F. Fish and Wildlife Habitat Values: (55 points maximum)

- 20 pts** Parcel is located in rural area (less than 3 houses within or businesses within 300 feet/mile of boundary), **or**
 - 10 pts** Parcel is located in semi-rural area (less than 6 houses or businesses within 300 feet/mile of boundary)
- 10 pts** Parcel contains a mix of wildlife habitat types
- 15 pts** Parcel is connected to at least 80 acres of other forest and riparian areas
- 10 pts** Parcel contains at least 1 perennial water source for wildlife/80 acres, **or**
 - 5 pts** Parcel contains 1 perennial watering site/160 acres or is within ¼ mile of a significant watering site.

Your Score_____

G. Endangered Species Values: (35 points maximum)

- 15 pts** Parcel supports at least 3 rare, threatened or endangered (RTE) species, **or**
 - 10 pts** 1-2 RTE species supported and documented on the parcel , **or**
 - 5 pts** No RTE species have been documented on the parcel, but habitat type is diminishing or has high likelihood of supporting RTE species in a sustainable manner
- 15 pts** Parcel contains an Indiana Heritage Database site
- 5 pts** Parcel is within 1 mile of an Indiana Heritage Database site

Your Score_____

H. Other Ecological Values: (30 points maximum)

- 10 pts** Parcel is part of a large contiguous forest block at least 500 acres in Northern Indiana, or 5,000 acres in southern Indiana, **or**
 - 5 pts** Parcel is part of 200 acre (north) or 1,000 acre (south) contiguous block of forest
- 5 pts** Parcel contains more than 3 ecological communities, **or**
 - 2 pts** Parcel contains 2-3 ecological communities
- 5 pts** Parcel includes ecological communities which are dwindling or uncommon in Indiana
- 10 pts** Parcel contains old growth forest or forest undisturbed for at least 50 years

Your Score_____

I. Conversion Threats to Parcel: (60 points maximum)

- 10 pts** Public water or sewer systems are within 2 miles of the parcel, **or**
 - 5 pts** Public water or sewer systems currently exist at parcel
- 10 pts** at least 50% of site suitable for development (e.g. soils, slope, can be divided into 3-5 acre lots)
- 10 pts** Parcel has more than 5,000 feet of public road frontage, **or**
 - 5 pts** Public road frontage is 1,000-5,000 feet
- 10 pts** Parcel is within 20 miles of a city of at least 20,000 people
- 10 pts** Parcel is within 5 miles of a town of at least 5,000 people (different city than previous question)
- 10 pts** Parcel is within 5 miles of interstate exchange
- 5 pts** Parcel contains more than 3,000 bd ft/acre of commercial timber

5 pts Property has other unique characteristics to attract development (e.g. river, lake, high quality paved road)

5 pts Property is currently listed for sale

Your Score _____

J. Acquirability or Manageability of Parcel: (40 points maximum)

10 pts There is written support to purchase this parcel from DNR, Land Trusts or other conservation groups

10 pts Owner has expressed willingness to sell the easement at least 25% below market value, **or**

10 pts There is written **financial** support from DNR, Land Trusts or other conservation groups

5 pts Parcel is absent of significant environmental hazards and in good ecological condition

5 pts Traditional forest uses are compatible with parcel's natural values

5 pts Current adjoining land uses are compatible with Forest Legacy Program

10 pts Owner is willing to protect adjoining open land from development by a conservation easement

Your Score _____

Other factors – check appropriate items

____ Owner is not reserving or withdrawing any buildings sites from the eligible ownership

____ 100% of the easement area is forest

____ There is written active support from the community for this legacy parcel

____ Parcel adjoins another accepted or nominated forest legacy parcel

____ Parcel compliments other federal investments or initiatives (e.g. wetland reserve area, watershed projects)

____ At least 50% of the easement value is be donated or paid for by other sources

____ Parcel conveys rights in addition to development and mineral rights (e.g. public access)

Your Total Score _____

3.3- SFSCC FLP Subcommittee Organization (Example from Maine Forest Legacy Committee)

Committee Purpose and Membership

Purpose

The Maine Forest Legacy Committee was established in 1993 by Maine’s State Stewardship Committee “to work with the Maine Forest Service on matters related to the Forest Legacy Program.” Its purpose today remains largely the same: to provide input to the Maine Department of Conservation Bureau of Parks and Lands, the lead agency for Maine’s Forest Legacy Program, regarding the management and implementation of the Legacy Program in Maine.

Committee Responsibilities

It is the Maine Forest Legacy Committee’s responsibility to:

- Review and make recommendations on appropriate policies, procedures, and other programmatic materials for the Maine Forest Legacy Program;
- Administer an annual RFP process to solicit new Maine Forest Legacy projects;
- Review and rank project proposals submitted;
- Maintain a list of currently active and viable Forest Legacy Program projects;
- Make recommendations to the Bureau of Parks and Lands regarding the prioritization of projects for Forest Legacy Program funding;
- Provide input on the range of values to be protected within Maine Forest Legacy Program projects;
- Periodically review Maine’s Forest Legacy Program Modified Assessment of Need
- Monitor the Program’s structure to ensure that it continues to meet the forest land protection needs of the State; and
- Ensure that support for the Forest Legacy Program remains strong within Maine and nationally.

Committee Membership

The Committee is intended to represent a broad range of agencies and organizations with interest and expertise in forest and land conservation issues while being of a reasonable size to remain efficient. Each Committee member embraces the principles and concepts of the Forest Legacy Program, is willing to work positively within the Committee structure to achieve the Program’s goals, and has a strong understanding of and commitment to seeing the economic, recreational, and ecological values and traditions of Maine’s forestlands maintained.

The Committee consists of 12 members some of whom are permanent members, but most of whom hold staggered three-year terms. Committee member terms are limited to one term. Committee members are chosen by the Director of the Bureau of Parks and Lands. Standing Committee members and others may make recommendations to the Bureau Director regarding potential Committee candidates at any time. Public participation is welcome at Committee meetings.

It is the responsibility of each member of the Maine Forest Legacy Committee to:

- Regularly attend and participate in Maine Forest Legacy Committee meetings, which are held from 3-6 times/year;
- Review Committee materials prior to Committee meetings;
- Periodically serve on subcommittees or otherwise perform special assignments;
- Bring unique expertise to the Committee based on the members' affiliation with a particular interest group, organization, or agency;
- Provide input into the development and review of Maine Forest Legacy Program policies, procedures and other programmatic materials;
- Evaluate project proposals and make recommendations regarding their merits, priority and funding level as Maine Forest Legacy projects; and
- Serve as an advocate for the Forest Legacy Program.

Maine Forest Legacy Committee members represent the following interests, organizations, and state agencies:

- 1/2. Two large landowners/land managers (representing a private industrial landowner, private non-industrial landowner, family ownership, and/or timber investment management organization)
(John Bryant, International Paper, term to expire 12/31/05)
(Dan Hudnut, Wagner Forest Management, term to expire 12/31/06)
3. Statewide sportsman's organization
(Bob Engelhardt, Sportsman's Alliance of Maine; term to expire 12/31/07)
4. Statewide environmental advocacy organization
(Ellen Baum, Natural Resources Council of Maine, term to expire 12/31/05)
- 5/6. Two statewide non-profit land conservation partners
(Sam Hodder, Trust for Public Land, term to expire 12/31/06)
(Kate Dempsey, The Nature Conservancy, term to expire 12/31/07)
7. Wood processor
(currently vacant; to be filled)

8. Public Representative who resides within Maine's Forest Legacy area - individual will fill gap in skills/interests otherwise not represented on Committee (John Simko, Town of Greenville, term to expire 12/31/06)
9. DOC Bureau of Parks and Lands Director of Land Acquisition– permanent position (currently Ralph Knoll)
10. Maine Forest Service State Forester Designee – permanent position (currently Morten Moesswilde)
11. Land for Maine's Future Executive Director – permanent position (currently Tim Glidden)
12. Department of Inland Fisheries & Wildlife Director of Resource Management– permanent position (currently Ken Elowe)

3.4- Conservation Easement Checklist

Structuring a Conservation Easement Restricted Uses and Reserved Rights

Restricted uses may deal with:

- subdivision and development
- commercial or industrial use
- structures
 - new buildings
 - existing buildings
 - other structures (aircraft facilities)
 - roads
 - other improvements
- alteration of the land surface
 - filling, excavating, dredging, mining,
 - drilling, exploration, extraction of minerals
 - hydrocarbons (methane)
 - sand, gravel, soil
- storage, dumping waste
- conversion of native vegetation
- introduction or release of nonnative or non-naturalized species
- establishment of commercial livestock feedlot, commercial farming operation
- application of biocides, herbicides
- keeping or storage of automobile, trucks, campers
- utility lines (require that they be buried)
- signs
- soil, erosion
- water, water rights transfer
- wetlands
- ponds and streams; alteration, excavation or impairment of natural watercourse
- wildlife and habitat; animal trapping, hunting, fishing, game farming
- trees, shrubs, other vegetation, harvesting
- noxious weeds
- motorized vehicles

Reserved rights may deal with:

- to reside on property
- to engage in agricultural use grazing and pasturing
- maintenance, repair fencing, corrals
- maintenance, repair of water facilities (usually for livestock)
- use of agricultural chemicals as spelled out (noxious weeds, forest or rangeland pests, crops)
- controlled or prescribed burns
- construction of utility systems
- keeping domestic pets
- non-commercial, passive recreational uses
- maintenance and improvement of existing roads and trails
- temporary use of camp wagons, trailers, tents
- forest management - FSP
- commercial and non-commercial hunting and fishing
- fish and wildlife protection

****Note:** These lists are not all inclusive, but to be used as suggestions.

Model Conservation Easement Checklist

Recitals/Whereas'

- ❑ Title recitation
- ❑ Legal description of property (brief; complete legal should be an Exhibit)
- ❑ Generic conservation values
- ❑ Qualitative description of property
- ❑ Baseline documentation
- ❑ Continuation of existing uses
- ❑ Conveyance of right to preserve and protect conservation values
- ❑ Value of interests at transfer be used as non-federal match for the FLP
- ❑ Qualifications of Grantee
- ❑ Grantee's commitment
- ❑ State Code

Provisions

- ❑ Purpose
- ❑ Authority - authorized by the Coop Forestry Assistance Act of 1978...
- ❑ Rights of Grantee
 - Preserve and protect conservation values
 - Inspection/monitoring
 - Prevent activity or use that is inconsistent with purpose of easement
 - Review, comment on, approve/object to proposed plans
- ❑ Prohibited Uses
 - Subdivision
 - Structures and improvements
 - Mineral development
 - Topography modification
 - Waste disposal and hazardous materials
 - Industrial, commercial and residential activities
 - Signs and billboards
 - Utility rights-of-way
 - Water rights transfer
- ❑ Reserved Rights
 - Right to engage in or permit or invite others to engage in all uses of the property that are not expressly prohibited/inconsistent with purpose of easement
 - Forest Management
 - Leases, permits (grazing, hunting, fishing, recreational, educational, charitable); erect transient structures
 - Limited building right - if applicable
- ❑ Review of Grantor plans pursuant to prohibited uses and reserved rights
- ❑ Grantee's facilitation and enhancement of CE values
- ❑ General agreed parameters for certain types of improvements and uses (roads, structures and other improvements)
- ❑ Access - "No right of access by the general public to any portion of the Property is conveyed by this Easement", or spell out type of access allowed
- ❑ Amendment (how can the easement be amended)
- ❑ General Provisions

- Duration of Easement – perpetuity
 - Successors
 - Taxes
 - Maintenance
 - Proceeds (use FLP 2003 Guidelines example Section XIII)
- Violations and remedies
- Signatures

Exhibits

- Property description (complete legal description)
- Acknowledgment of Baseline Documentation Report
- Parameters for Stewardship Plan or reference to the location of the plan

3.5- Conservation Easement Example

(a) Required Language

Cost share - WHEREAS, Grantors have specifically requested that the value of donation interests at transfer be used as a non-federal match for the Forest Legacy Program.

State Statute - WHEREAS, Grantee is a governmental unit qualified for holding conservation easements under Section 170(b)(1)(A)(v) of the Internal Revenue Code and Title __, Chapter __ of the [state] Code.

Forest Legacy Purposes clause - *These purposes are consistent with the clearly delineated open space conservation goals and objectives as stated in Forest Legacy Program as established in 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"*

The reversion of funds for Forest Legacy inconsistency clause - *The Easement Holder acknowledges that this Easement was acquired with Federal funds under the Forest Legacy Program (16 USC Section 2103c) and the interest acquired can not be sold, exchanged or otherwise disposed, except as provided in Section __, (refer to the section only allowing for governmental entities to hold the easement title) unless the United States is reimbursed the fair market value of the interest in the 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.*

Assurance that the rights acquired are perpetual; and Assure that a governmental entity holds interests acquired, and that any assignment of rights acquired is only to a governmental entity - The burden of the Easement created hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land, but shall be in gross and assignable or transferable only to a governmental entity. Any such assignee or transferee shall have the like power of assignment or transfer.

Or, This Easement runs with the land and shall continue in perpetuity and shall bind Grantor and all future owners, assigns, and tenants of the Property.

(b) Northeastern Area Example

EASEMENT DEED

THIS EASEMENT DEED made this __ day of _____ 200 , by and between _____, (hereafter referred to as the “Grantor”) which has as _____ legal address and the UNITED STATES OF AMERICA, by and through the Secretary of Agriculture, Washington, DC 20250 (hereafter referred to as the “United States”) the Grantee. The Grantor and the United States are jointly referred to as the “Parties”

The acquiring agency of the United States is the Forest Service of the Department of Agriculture

WITNESSETH

Purposes. 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. 2103 c) 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 areas, and other ecological values.

The Parties agree that the purpose of this easement is also to assure that the property herein described at Exhibit “A” and hereby encumbered as set forth in Exhibit “B” will be retained forever in its existing natural, scenic and forested condition and will be used only in conformity with the terms and conditions of this easement.

The Grantor specifically reserves the right to use the property herein encumbered by the easement for forest management and non-commercial recreation, as herein defined and restricted.

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

NOW THEREFORE, in consideration of _____ Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, the GRANTOR, does hereby grant and convey in perpetuity and with general warranty of title to the UNITED STATES OF AMERICA, the GRANTEE, a perpetual conservation easement in, over and upon the herein described property This easement shall constitute a servitude upon and shall run with the land in perpetuity. The GRANTOR covenants to abide by the restrictions and conditions stated herein.

The land which is subject to this easement (the “property” or the “easement area”) is more fully described in EXHIBIT A which is appended to and made a part of this easement deed.

The easement terms, conditions, provisions and restrictions affecting the use and maintenance of the property described in Exhibit A are as set forth in EXHIBIT B which is also attached hereto and made a part hereof.

TO HAVE AND TO HOLD, this easement is granted to the United States of America and its assigns forever. The Grantor covenants that _____ is vested with good title to the property and will warrant and defend the same on behalf of the United States against all claims and demands whatsoever. The Grantor covenants to comply with the terms and conditions of this easement.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed the day and year first above written.

Grantor(s): _____

Witnesses: _____

ACKNOWLEDGEMENT

State of _____)

County of _____)

On this _____ day of _____, 200, before me _____, the undersigned notary public, personally appeared _____ and _____, who acknowledged themselves to be the _____ and _____ of _____ a _____ Corporation, and that they, being authorized so to do, executed the foregoing instrument as the act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this date.

Notary Public

(Notarial Seal)

My Commission Expires: _____

[Note the above acknowledgement is for corporations For individuals, use appropriate modifications in conformity with state practice]

EXHIBIT “A”
DESCRIPTION OF THE “PROPERTY”
[Insert]

EXHIBIT “B”

CONSERVATION EASEMENT TERMS.

PART I.
RESTRICTIONS ON THE USE OF THE PROPERTY.

The Grantor covenants to abide by the following restrictions on the use of the property:

A. Subdivision. [Use only one of the following options]

[Option A-1]

The entire property as described in Exhibit A shall not be subdivided into smaller parcels

[Option A-2]

The property as described in Exhibit A may be subdivided into _____ parcels, and no parcel so subdivided may now or in the future be reduced to less than _____ acres.

B. Structures and Improvements. Except as expressly provided herein, there shall be no building, structure, or other improvements of any kind, temporary or permanent, constructed or maintained on the property including, but not limited to, houses, towers, satellite dishes, windmills, wind turbines, sheds, tanks, mobile homes, dams, impoundments, and communication equipment. [Optional sentence] Existing stone walls, culverts, trails, as indicated on Exhibit _____ may be maintained.

C. Mineral Development. [Use only one of the following options]

[Option C-1]

No mining, drilling, or mineral development shall be permitted in, under or upon the property including, but not limited to, the development of minerals or common varieties of mineral materials such as sand, gravel, stone and clay, or the mining of organic materials such as peat. However, the Grantor may designate not more than _____ areas not to exceed ___ acres each from which sand, gravel and stone may be extracted for use as is reasonably necessary for the construction and maintenance of those

trails, roads and parking areas which are located within the property and are allowed by Paragraphs _____ and _____, provided that no off-site sale or use may be made of such material.

For a period of _____ years from the date of this instrument, the prospecting, mining and removal of any subsurface resources, including [minerals.] [oil and gas,] or [geothermal] are subject to the following terms and conditions:

* [] indicate optional words or phrases

1. Whoever undertakes to exercise the rights shall give prior written notice to the United States and submit satisfactory evidence of authority to exercise to such rights.
2. Only so much of the surface of the lands shall be occupied, used, or disturbed as is necessary in bona fide prospecting for, drilling, mining (including the milling or concentration of ores) , and removal of subsurface resources.
3. No surface mining of any kind shall be permitted, except for sand and gravel operations which are limited to the areas delineated on the attached EXHIBIT _____. In no event shall the size of any sand and gravel operation exceed _ acres in size without satisfactory reclamation of mined over areas.
4. All structures, other improvements, and materials shall be removed from the lands within one year after date of termination of the operations. Should the Grantor fail to do so within said one year, the United States may remove, destroy or otherwise dispose of said structures, or improvements and materials at the Grantor's expense.
5. In the prospecting for, mining, and removal of any subsurface resources, all reasonable provisions shall be made in accordance with applicable federal, state and local laws and regulations to dispose of all tailings, dumpage, or other deleterious materials or substances in such manner as to prevent obstruction pollution or deterioration of water and other natural resources.
6. Upon completion of operations, the land shall be reclaimed as much as practical to its original contours and re-vegetated.
7. The Grantor shall provide a bond in sufficient amount as determined necessary by the United States to guarantee compliance with the requirements of this section.

D. Topography Modification. Changes in the existing general topography of the landscape or land surface of the property, excluding minor change as a result of activities permitted by Paragraph _ are prohibited unless such changes were caused by the forces of nature.

E. Waste Disposal and Hazardous Materials. No portion of the property shall be used for dumps, landfills, or the storage or deposit of waste materials of any kind. Disposal of any waste materials generated by activities permitted under this easement shall be in accordance with applicable state law. Slash and other debris associated with timber harvesting activities shall be disposed of according to standard forestry practices.

F. Industrial, Commercial, and Residential Activities. Except for forest management uses as defined in Part _ herein, the use of the property for industrial, commercial or residential activities is prohibited.

G. Signs and Billboards. No sign or billboard shall be placed on the property, except to state the name and address of the property owner and manager; to advertise on-site activities which may be permitted on the property; to advertise the sale or rental of the property; to give trail directions; or to control

unauthorized entry or use as may be permitted herein. Signs shall be no larger than _____ square feet in area.

H. Utility Rights-of-Way. No utility rights-of-way shall be located within the easement area after the date of this instrument unless they are located underground.

PART II. SPECIFIC RESERVATIONS BY THE GRANTOR

Subject to the expressed limitations and prohibitions of this easement, the Grantor reserves the right to use the property for forest management and non-commercial recreation purposes.

A. Forest Management. Timber harvesting is permitted on the property for commercial purposes in accordance with all applicable federal and state laws and regulations, within state prescribed forest best management practices and with the following provisions:

1. Clearcuts shall not exceed 40 acres in size [A maximum of 40 acres] For the purposes of this instrument, a “clearcut” has occurred “when, immediately after timber harvesting on a forested site greater than ___ acres, the following condition exists:

- * The average residual basal area of trees over 1 inch in diameter, measured at 4 1/2 feet above the ground, is less than _____ square feet per acre.

Within any ten (10) year period no more than _() percent of the total easement area may be clearcut. The start of the 10 year period would begin on the date the first clearcut commences after the conveyance of this easement.

Notwithstanding this provision, the Grantor shall have the right to cut and remove by clearcut methods, dead, dying and diseased trees which result from natural occurrences, including wildfire, disease, insect infestation and blowdown, to prevent or mitigate greater harm to the scenic and recreational values of the easement area.

2. Except for insect, disease, fire, wind damage and at necessary skid and haul road crossings, timber harvesting or cutting within 100 feet of the annual mean high water mark of any pond or lake or the bank of any perennial stream, creek or river, shall not reduce the basal area to less than 50% of normal stocking levels, of which 15% of the remaining stems must be sawtimber size. Harvesting along streams, creeks and rivers shall be conducted in a manner that maintains shading of the watercourses to sustain normal water temperatures, ensures a continued source of large overmature trees for recruitment of woody debris into watercourses, and leaves trees which are critical to stream bank stability. Logging equipment must be kept out of the riparian zone and watercourses except for necessary skid and haul road crossings. Logging slash is to be removed from the streams.

3. This forest management reservation permits the following activities conducted on the property in a manner which complies with the provisions of this easement and which is consistent with the standards, customs, and practices that are current and generally accepted by professional forest managers: timber cruising, timber stand improvement practices such as thinning, timber harvesting and regeneration of forest stands as qualified herein, tree planting, pruning, maple syruping and sugaring, and construction and maintenance of necessary log landings, skid trails and haul roads. Any drainage structure such as culverts, bridges, or waterbars constructed on trails and roads will be maintained by the Grantor as long as the said trails and roads remain in place.

B. Non-Commercial Recreation. Non-commercial recreation is permitted on the property in accordance with all state laws and regulations in a manner which complies with the purposes, goals and provisions of this easement and which is consistent with practices that are generally accepted by professional resource managers to protect and promote the natural resources. For purposes of this

easement, non-commercial recreation is defined as nondeveloped dispersed recreational activities including, but not limited to camping, hunting, trapping, fishing, hiking, snowshoeing, skiing, biking, and horseback riding.

[optional] With respect to non-commercial recreational activities, the Grantor may operate, construct, reconstruct, maintain, repair, remove, replace and relocate road and trail systems and parking areas as shown in Exhibit C attached hereto and made a part hereof For purposes of this clause, the term road and trail systems means a network of routes or paths developed and used primarily for recreational activities as defined above For purposes of this clause, the term “parking area” means an unpaved cleared area suitable for the parking of passenger vehicles which shall not exceed an area of _____square feet, provided, that culverts, water bars and use of gravel will be utilized to prevent and control erosion

PART III. USE OF THE PROPERTY BY THE UNITED STATES.

The United States shall have the following rights, but not the obligation, to occupy and use the property.

A. Entry and Inspection. To enter upon the property to inspect for compliance with the terms of this easement, and otherwise administer use of the property pursuant to the rights acquired hereunder. In exercising this right, the United States may utilize motorized vehicles including, but not limited to, cars, trucks, all terrain vehicles, snowmobiles, helicopters and boats. [Optional sentence] Any access to the easement area by the United States for inspection purposes shall be on reasonable advance notice to the Grantor except in emergencies or cases of suspected deliberate violations.

B. Signs and Notices. To post regulatory and other signs and notices consistent with this easement for purposes of promoting the purposes of this easement, and to survey, mark and monument the boundaries of the property.

C. Monitoring and Research. To conduct monitoring and research activities in connection with public recreation, environmental quality, fish and wildlife, scenic, natural, historic and cultural values.

D. Vegetation. To plant and prune, and to mark, cut, and remove that which is dead, dying, diseased, or insect infested with respect to trees and shrubs for the purposes of restoring or maintaining the aesthetic, natural or scenic qualities of the property, for prevention of disease or insect infestation, and for purposes of public health and safety. Title to any commercial trees so cut and removed shall remain with the Grantor and any receipts therefrom, less costs to the United States, shall accrue to the Grantor.

E. Non-Commercial Recreation.

1 To construct, reconstruct, locate, relocate, develop, operate, use and maintain trails, overlooks and vistas, to enable or enhance dispersed recreational use of the property by the public provided such actions do not interfere with forest management activities.

2 To construct, reconstruct, locate, relocate, develop, operate, use and maintain roads and parking areas for use by the general public upon consent of the Grantor as to the location and size For purposes of this clause, the term “parking area” means an unpaved cleared area suitable for the parking of passenger vehicles which shall not exceed an area of _____ square feet, provided, that culverts, water bars and use of gravel will be utilized to prevent and control erosion.

3 Title to any commercial trees cut and removed by those activities allowed under this Part III(E) shall remain with the Grantor and any receipts therefrom, less costs to the United States, shall accrue to the Grantor.

PART IV.

PUBLIC ACCESS.

A. Recreation. Subject to the terms of this Part, the public shall be permitted to enter, traverse and otherwise use the property in accordance with all state laws and regulations, for recreational activities, including but not limited to camping, hunting, trapping, fishing, hiking, snowshoeing, skiing, biking and horseback riding. Snowmobiles and other motorized vehicles are permitted on designated roads and trails, as shown on the map entitled Exhibit _____. The Grantor shall not charge the public or otherwise impose a fee for public use and access of the easement area.

B. Restrictions on Public Use.

1. The Grantor may regulate or prohibit the removal of any trees, firewood or other forest products by the general public. Subject to such regulation by the Grantor, the public may use dead or downed trees for the specific purposes of onsite cooking and warming.

2 The Grantor, in consultation with the United States, may reasonably regulate public use and access where ongoing forest management activities could pose a hazard to public safety or to protect the public from known hazards.

PART V.

GENERAL TERMS AND CONDITIONS

A. Duration of Easement. This easement shall continue in perpetuity.

B. The Grantor and Successors in Interest. All obligations of the Grantor under this easement deed shall also bind the Grantor's heirs, successors, agents, and assigns. All the Grantors who are parties to this easement deed, and all their heirs, successors, and assigns shall be jointly and severally liable for compliance with the terms and conditions of this easement deed.

C. United States. As used in this easement deed, the term "United States" shall include the authorized representative of the Secretary of Agriculture or the Secretary's agent, representative, successor or assign.

D. Violations and Remedies - Enforcement. Grantor shall use its best efforts to comply with each and every term and provision set forth in this easement. If there is any failure of the Grantor to comply with the provisions of this easement or to provide the authorized representative of the United States access to the property, the Grantor hereby consents to and agrees that the United States shall have any or all of the following remedies:

1. The right to enter upon the property to perform necessary work for prevention of or remediation of damage in the event of any failure of the Grantor to comply with the provisions of this easement deed and to bill and collect from the Grantor the costs of such work including administrative, legal and attorney's fees.

2. The authorized representatives of the United States, including any State, County or local Government Official, may enforce any term or condition of this easement deed with any legal or equitable remedy provided by law. All expenses incurred by the United States and its authorized representatives (including any administrative, legal and attorney fees) thereby incurred shall be assessed

against the Grantor, shall be owed immediately to the United States or its authorized representative, and the Grantor consents and agrees that this instrument may be introduced in any enforcement proceedings as the stipulation of the parties hereto with regard to all matters contained herein.

3. Enforcement of the terms of this easement shall be at the discretion of the United States, and any forbearance by the United States to exercise its rights under this easement in the event of any breach of any term by the Grantor shall not be deemed or construed to be a waiver by the United States of such term or of any subsequent breach of the same or any other term of this easement or of any of the rights of the United States under this easement. No delay or omission by the United States in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver.

4. The Grantor waives any defense of laches, estoppel, or prescription.

5. Nothing contained in this easement shall be construed to entitle the United States or its authorized representatives to bring any action against the Grantor for any injury to or change in the property resulting from causes beyond the control of the Grantor including but not limited to fire, flood, storm, and earth movement.

E. Grantor's Obligations of Ownership. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind relating to the ownership, operation, upkeep, and maintenance of the property, including the maintenance of insurance coverage, and payment of taxes.

F. Subsequent Transfers of Ownership. Nothing in this easement shall affect the right of the Grantor to convey the Grantor's interests in the property at any time in the future subject to the terms, covenants and provisions of this easement. The Grantor agrees further to incorporate the terms of this easement as subsections and encumbrances in any deed or other instrument by which they divest themselves of any interest in all or a portion of the property.

G. Easement Management. The United States shall have the right to delegate management and enforcement authority under this easement to any duly appointed easement manager, which may be a representative of any federal or state government agency. The United States further has the right to delegate separate management and enforcement authorities among several qualified entities, or to reserve any or all such authorities to the United States or delegated agency.

H. Rule of Construction. It is expressly understood and agreed that this easement is acquired pursuant to and in furtherance of law and, notwithstanding any provision of state law, that this instrument shall be construed to effect the purposes of the Federal Forest Legacy Program and the conservation purposes for which this easement was acquired.

I. Effect of Other Laws. Nothing in this easement deed shall be construed to permit any activity by the Grantor which is otherwise prohibited by any federal, State or local law, rule or regulation.

(Optional]

J. Forest Stewardship Plan.

1. In addition to the terms and conditions of this easement, the Grantor agrees that activities conducted on the property shall be in compliance with a Forest Stewardship Plan prepared consistent with the provisions of section 5(f) of the Cooperative Forestry Assistance Act of 1978, as amended, 16 US C 2103a(f), and approved in writing by the State. The Parties agree that the Forest Stewardship Plan shall be subject to revision in order to incorporate forest management practices that are prescribed under federal or state law. For Grantors who are not eligible to participate in the Forest Stewardship Program, the property shall be managed in accordance with a multi-resource forest management plan.

2. In the event of any inconsistency or conflict between the provisions of this easement and any Stewardship Plan, this easement shall prevail.

K. Miscellaneous.

1 Nothing herein is to be construed as an authorization by the United States to expend or obligate monies of the United States in advance of appropriation thereof.

2. Invalidity of any of these covenants and restrictions or anything else contained herein or any part thereof by judgments or court orders shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

(c) Southern Region Example

FOREST LEGACY CONSERVATION EASEMENT

STATE OF NORTH CAROLINA
COUNTY OF _____

This Conservation Easement ("Conservation Easement") made this ____ day of _____, 200_, by and between _____ Paper Company, ("Grantor"), and the **STATE OF NORTH CAROLINA**, Division of Forest Resources, ("Grantee") for the purpose of forever conserving the natural and open character, forested habitat and scenic qualities of the subject property.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

RECITALS

- A. Grantor owns in fee simple certain real property situate, lying and being in ____ County, North Carolina comprised of ____ acres, more or less, as more particularly described in Exhibit A attached hereto and by this reference incorporated herein (hereinafter "Property"), and depicted on the map shown in Exhibit B attached hereto and by this reference incorporated herein.
- B. Grantee is a qualified conservation organization (State Conservation Agency) as defined under Section 170 of the Internal Revenue Code. The Grantee can hold a perpetual easement, which will not automatically be extinguished as set forth in the Conservation and Historic Preservations Agreements Act NCGS 121-34 et.seq. This easement is being acquired through the directive of the Forest Legacy Program of the 1990 Farm Bill and meets the objectives of the North Carolina Forest Legacy Assessment of Need Document dated September 15th,1999.
- C. Grantor and Grantee recognize that the Property in its present state has conservation value as an area that has not been subject to significant development and that provides a "relatively natural habitat for fish, wildlife, or plants or similar ecosystem" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, including mixed pine hardwood and pine plantation forest that provides (1) critical food, cover and travel corridors for important game species including wild turkey, black bear and white-tailed deer; (2) nesting, stopover and overwintering habitat for numerous neotropical and nonmigratory songbird species and (3) a undeveloped buffer to a nationally significant Natural Heritage site, Town Creek Marshes and Swamps, protected through a perpetual conservation easement purchased through the State Clean Water Management Trust Fund and held by the North Carolina Coastal Land Trust and State of North Carolina. The property has been deemed a significant forest system under the USDA Forest Legacy Program and the State of North Carolina Division of Forest Resources has been awarded a grant to purchase a conservation easement over said Property. The property lies within the North Carolina Coastal Land Trust's Town Creek/Lower Cape Fear River Conservation area, an initiative to protect large forested corridor along Town Creek from the Green Swamp to its mouth at the Cape Fear and south to Sunny Point Military Terminal.

- D. The Property has open space and scenic qualities, the preservation of which is pursuant to federal, state and local government policy and will yield significant public benefit as evidenced by:
- (1) requirement by the State of North Carolina of a basinwide management plan for the Cape Fear River and its tributaries for the purpose of protecting water quality, public water supply, significant wetlands and natural areas along the corridor;
 - (2) the protection of similar properties along Town Creek and the Lower Cape Fear River by the North Carolina Coastal Land Trust;
 - (3) the Forest Legacy Program, U.S.C. 2101 et seq., established by the U.S. Secretary of Agriculture to protect environmentally important forest areas that are threatened by conversion to nonforest uses and to promote forest land protection including the conservation of scenic, cultural, fish, wildlife and recreation resources, riparian areas, and other ecological values.
 - (4) The Department of Agriculture Cooperative Forestry Assistance Act (CFAA) of 1978, as amended (16 U.S.C. 2103c et. Seq) provides authority for the U.S. Secretary of Agriculture 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), also referred to as the 1990 Farm Bill, amended the CFAA and allows the Secretary to establish the Forest Legacy Program to protect environmentally important forest areas that are threatened by conversion to nonforest uses.
 - (5) the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions “appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use;” and which provides for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvement less any reduction in value caused by the agreement”;
 - (6) the special North Carolina Conservation Tax Credit Program that encourages contributions of land that provides habitat for fish and wildlife and other similar land conservation purposes set forth in N.C.G.S. 105-130.34 and 105-151.12 et seq;
 - (7) the special use assessment of farm and forest land as set forth in N.C.G.S. 105-277.2 et. seq. and N.C.G.S. 105-287(a)(2)(a) et. seq.
- E. Grantor and Grantee have the common purposes of conserving the above-described conservation values and the natural, scenic, and open condition of the Property.
- F. Grantee is a qualified public agency under Section 501(c)(3) and 509(a)(2) of the Internal Revenue Code, is authorized by the laws of the state of North Carolina to accept, hold and administer conservation easements, possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a “qualified conservation agency” and an “eligible donee” within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder.
- G. The biological and open space characteristics of the Property and its current use are described in the Easement Documentation Report, dated June 2000 prepared by the Grantee, and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both the Grantor and the Grantee have copies of this report. It will be used by the parties to assure that any future changes in the use of the Property will be consistent with the terms of this

Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

- H. The Grantor owns the entire fee simple interest in the Property, including the entire mineral estate.
- I. The Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 et seq., provides for the enforceability of restrictions, easements, covenants or conditions appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in forest use.
- J. 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. 2103 c) 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 areas, and other ecological values.

The Parties agree that the purpose of this easement is also to assure that the property herein described in the Easement Document Report and hereby encumbered as set forth in the foregoing recitals will be retained forever in its forested condition and will be used only in conformity with the terms and conditions of this easement.

The secondary objective is to conserve productive forest resources on the Property and to encourage the long-term, professional management of those resources, and to facilitate the economically sustainable production of forest resources without compromising surface water and ground water quality, scenic benefits to the public, wildlife habitat, recreational and other conservation values.

The Grantor specifically reserves the right to use the property herein encumbered by the easement for forest management and non-commercial recreation, as herein defined and restricted.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby unconditionally and irrevocably grants and conveys forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts a Grant of Conservation Easement of the Nature and character and to the extent hereinafter set forth in, over through and across the Property, together with the right to preserve and protect the conservation values thereof as described in the Recitals herein.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, Grantor's personal representatives, heirs, successors and assigns, lessees, agents and licensees forever.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. The Property shall be maintained in its natural, scenic, and open condition and restricted from any development or use that would impair or interfere with the conservation values of the Property.

All rights reserved by Grantor are considered to be consistent with the conservation purposes of this Conservation Easement and require no prior notification to or approval by Grantee unless expressly provided hereunder. Notwithstanding the foregoing, the Grantor and Grantee have no right to agree to any activity that would result in the termination of this Conservation Easement or would cause it to fail to qualify as a qualified conservation contribution as described in section 170(h) of the Internal Revenue Code, or any regulations promulgated thereunder.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted, or reserved as the case may be.

- A. Industrial, Agricultural and Commercial Use. Industrial, agricultural and commercial use of the Property and access therefore is prohibited except:
- (1) Forestry and wildlife enhancement as described below; and
 - (2) The leasing and licensing of hunting, fishing, hiking, nature, forestry and historic tours, photography and filming, horseback riding rights and other similar passive or “eco-tourist” type commercial recreational activities and uses; Provided; however that all such activities must be conducted in a manner not inconsistent with the conservation purposes of this Conservation Easement and are limited to de minimis access to and uses of the Property and shall not violate the standard set forth in Section 2031(c)(8)(B) of the Internal Revenue Code.
1. Forestry. Silvicultural use of the Property, including but not limited to timber thinning, clearcutting, pine straw raking, prescribed burning, and reforestation may continue; provided however that any timber harvesting and management shall be carried out in accordance with a written Multiple Resources Management Plan consistent with the provisions of (1) this Conservation Easement; (2) the American Forest & Paper Association’s Sustainable Forestry Initiative 1999 Edition, to be prepared by a registered forester, such plan to be approved by Grantor and Grantee, which may be amended at a minimum of every ten years and that shall be subject to the following:
 2. All such activities shall be in accordance with best management practices and forest practices guidelines for the timber industry as the same may be promulgated by law or regulation in the State of North Carolina and amended from time to time
 3. Forested land may be cleared and converted to beneficial wildlife openings including food plots or other habitat, not to exceed a total of 60 acres in the aggregate to include existing road acreage which presently constitutes XX acres.
 4. Grantor has the right to prevent and control fire, as well as to apply fire as a management tool, on the Property. It is hereby recognized that fire is a natural component of the surrounding ecosystem and Grantor shall have no obligation to prevent or fight fires on the Property, unless the fire is the result of gross negligence of the Grantor.

5. The Multiple Resource Management Plan shall not apply if the purpose of the harvest is to salvage timber lost as a result of a hurricane, fire, flood or similar event or if an insect, disease, or forest health pest outbreak occurs and sanitation harvests are necessary to prevent the outbreak from spreading to adjacent stands. In the event salvage operations are necessary that would constitute removal of the timber on more than 25% of the easement property, then the grantee will notify and consult with grantor in writing prior to commencement of salvage operations. Salvage operations must be conducted in a manner that complies with forestry best management practices, state law, government regulations, and compliance with the Sustainable Forestry Initiative and company policy.

Except as provided above and in Section E, F, and I(3), there shall be no removal of trees or other land clearing.

- B. Signage. Display to the public of billboards, signs or advertisements is prohibited on or over the Property, except the posting of no trespassing signs, hunt club signs, for sale signs, signs identifying the conservation values of the Property and/or identifying the Grantor as owner of the Property and Grantee as holder of the Conservation Easement, and signs for educational or informational purposes concerning forest management activities that have occurred or will occur on the property.
- C. Refuse/Dumping. Dumping of nonbiodegradable substances such as chemicals and other hazardous substances, trash, garbage, human wastes or any other unsightly or offensive material, abandoned vehicles, appliances, machinery, or other nonbiodegradable material on the Property is prohibited. Recognizing, however, that illegal dumping of refuse can occur and such material shall be removed within a reasonable time through specific collection or routine clean-ups, as is currently provided for in the internal policy of Grantor. The temporary storage of trash in receptacles and the use of temporary port-a-johns for human waste for periodic off-site disposal is permitted. Land application of domestic septic effluent and/or municipal, commercial or industrial sewage sludge or liquid generated from such sources is prohibited.
- D. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Property except (a) for the purpose of combating erosion or flooding; (b) for construction and maintenance of existing and permitted structures, roads and activities permitted hereunder; (c) for maintenance of existing drainage ditches and water control structures; (d) for construction, repair and maintenance of new drainage ditches incident to forestry uses permitted herein, subject, however to all federal, state and local laws and regulations; and (e) for archeological and historical purposes; provided there will be no such excavation for archeological or historic purposes if such excavation may be destructive of other conservation values and purposes of this Conservation Easement as set forth in the Recitals,
- E. Hunting, Fishing, Wildlife Enhancement, Educational and Other Non-Commercial Recreational Activities. Non-commercial hunting, fishing, hiking, nature and historic tours, photography and filming, horseback riding rights and other similar passive or “ecotourist” type and/or educational recreational activities by Grantors and its invitees, subject to all federal, state and local laws and regulations is allowed. Commercial trapping, and trapping for wildlife management or other management purpose is allowed subject to all federal, state and local laws and regulations. The right

to clear, construct, and maintain unpaved trails limited to six feet (6') in width for non-commercial recreational use, and to provide for public access, provided that such activity or use is consistent with the purposes of this Conservation Easement.

- F. Conveyance and Subdivision. The Property may not be divided, partitioned, or subdivided, nor conveyed except in its current configuration as an entity.
- G. Water Quality and Drainage Patterns. Grantor and Grantee acknowledge that the Property contains forested wetlands and lies adjacent to valuable riparian areas and that the Property's natural hydrology is relatively intact, all of which contribute to the conservation values of the Property as set forth in the Recitals. There shall be no alteration of natural drainage patterns nor activities that would result in impairment to water quality or natural wetlands. Ditching activities in association with silvicultural practices occurring on the property is allowed in accordance with best management practices for forested wetlands, and all laws and regulations and as described in section E above.
- H. Improvements, New Construction and Access Thereto. No building, facility, mobile home, cell tower, radio tower, satellite tower, structure, or means of access shall be constructed or placed on the Property after the date of this Conservation Easement except that Grantor may, upon providing written notice to Grantee:
- (1) Construct, maintain and utilize reasonable means of access to and utilities for all permitted uses of the Property incidental to Grantors forest management and educational use, provided, however that (a) no road bed way may be wider than twenty-five (25) feet, and no road right of way shall exceed fifty 50 feet (b) construction of roads shall be limited to permeable materials, and (c) all new utilities shall, unless prohibited by the appropriate utility, be installed underground except for antennas, satellite dishes and other similar utility structures required by their nature to be located above ground; and,
 - (2) Construct and maintain gates for the purpose of limiting access and protecting the Property;
 - (3) Construct and maintain one open air Picnic Shelter no more than 5,000 square feet in size to be constructed of wood, concrete or other non-synthetic materials as practicable and to construct and maintain small parking area limited to 2 acres in size to be constructed with permeable materials for the recreational and educational purposes; provided:
 - i) construction must meet all local and state building codes;
 - ii) the location of the Picnic Shelter and parking area shall be subject to Grantee's approval, which may not be unreasonably withheld.
- I. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
- J. Quiet Enjoyment. Grantor reserves to itself, its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property as exist on the date of this grant that are not expressly prohibited or restricted herein and do not significantly impair or interfere with the conservation values of the Property as set forth in paragraphs C and D of the Recitals hereinabove and the right to sell, give or otherwise

convey the Property. Without limiting the generality of the foregoing, Grantor expressly reserves for itself, its successors and assigns, invitees and licensees the right of quiet enjoyment of the Property.

ARTICLE III. ENFORCEMENT, REMEDIES & CASUALTY LOSS

A. Upon any breach of the terms of this Conservation Easement by Grantor or by a third party which comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to begin undertaking actions that are reasonably calculated to correct promptly the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief including the right to require that the land be restored promptly to the condition required by this Conservation Easement.

Grantor acknowledges that its failure to abide by the provisions of this Conservation Easement will result in irreparable harm to Grantee and that Grantee's remedy at law for damages will be inadequate. Accordingly, Grantee shall be entitled upon any breach by Grantor to injunctive relief and to specific performance, in addition to any other available remedies. Any controversy or claim arising out of or relating to this Conservation Easement, or the breach of the Conservation Easement shall be litigated in the General Court of Justice of the state of North Carolina for _____ County and the parties consent to the exclusive jurisdiction of, and service of process by, that Court for the purpose of resolving any disputes and the propriety of venue in that Court.

If Grantee determines that circumstances require immediate legal action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies without prior notice to Grantor, but shall exercise reasonable efforts to notify Grantors.

B. Any cost incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitations, costs of suits and attorney's fees, and any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

C. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.

D. Grantee, its employees and agents and its successors and assigns, has the right, with reasonable prior notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantor, Grantor's representatives, heirs, successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

E. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

ARTICLE IV. ACCESS

The granting of this Conservation Easement does not convey to the public the unencumbered right to enter the Property for any purpose whatsoever. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads.

The Grantor grants permission to the Grantee to access the property for scientific research and for periodic site visits, led by Grantee, for tours to observe the forestry management and conservation values of the Property. All such access shall be at reasonable times and is subject to Grantor's prior approval, not to be unreasonably withheld.

ARTICLE V. EXHIBIT, DOCUMENTATION AND TITLE

A. Legal Description. Exhibits A and B, Legal Description of the Property and map of the property, are attached hereto and made a part hereof by reference.

B. Easement Documentation Report. The parties acknowledge that the Conservation Easement Documentation Report ("Easement Documentation Report") dated June, 2000, prepared by the Grantee, a copy of which is on file at the offices of the Grantee, accurately establishes the uses, conservation values and condition of the Property as of the date hereof.

C. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that there is legal access to the property; that the Property is free and clear of any and all encumbrances, except matters of record and Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers. Grantor agrees for itself, its successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, for itself, its successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed.

B. Conservation Purpose.

(1) Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

(2) Grantor and Grantee agree that the conveyance of this Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value to the Property as a whole.

That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions which makes impossible or impractical any continued protection of the Property for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. Upon such proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee's proceeds shall be used for other conservation purposes pursuant to the approval of the Secretary of Agriculture.

(3) Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests as specified above; all expenses including attorneys fees incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority.

(4) The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property.

(5) The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement it holds, the organization receiving the interest will be a qualified government entity which is organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) of the Internal Revenue Code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

(6) The Grantor agrees to pay any real estate taxes or other assessments levied on the Property.

C. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code and shall be governed by and construed under the laws of the State of North Carolina, United States of America.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to

persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

E. Recording. Grantee shall record this instrument and any amendment hereto in timely fashion in the official records of _____ County, North Carolina, and may re-record it at any time as may be required to preserve their rights under this Conservation Easement.

F. Hazardous Waste. The Grantor covenants and represents that, to the best of Grantor's knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Property, and that there are not now any underground storage tanks located on the Property and agrees to indemnify and hold harmless the Grantee against any claims, liabilities, damages, losses and costs arising from any such event, occurrence or condition at any time, except as caused by Grantee, their agents or assigns.

Notices. Any notices shall be sent by registered or certified mail, return receipt requested, addressed to the parties.

In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed to have been given unless, within thirty (30) days after receipt of notice, a written notice of disapproval and the reason therefore has been mailed to the party requesting consent.

H. Amendments. Grantors and Grantee are free to jointly amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that (1) will affect the qualification of this easement under N.C.G.S. 121-34 et seq., or under Sections 170(h) of the Internal Revenue Code; (2) is inconsistent with the purposes of this Conservation Easement; or (3) affects the perpetual duration of this conservation Easement. Such amendment(s) shall be effective upon recording in the public records of _____ County, North Carolina.

(d) Western Area Example

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this ____ day of _____, 2005, by *****, a Utah corporation, having an address at ***** ("Grantor"), in favor of the STATE OF UTAH, by and through the Department of Natural Resources, Division of Forestry, Fire & State Lands, a government entity, having an address at 1594 W. North Temple, Suite 3520, Box 145703, Salt Lake City, Utah 84114-5703 ("Grantee").

WITNESSETH

WHEREAS, grantor is the sole owner in fee simple of certain real property consisting of approximately ____ acres, more or less, located in ***** County, Utah, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the property possesses natural, forested, scenic, cultural, historical, wildlife, and open space values (collectively the "Conservation Values") of great importance to Grantor, Grantee, the people of ***** County, and the people of the State of Utah; and

WHEREAS, the Conservation Values of the Property are consistent with the goals of Utah's Forest Legacy Program and the establishment of this 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 areas; maintaining and restoring natural ecosystem functions; and, maintaining forest sustainability and the cultural and economic vitality of rural communities; and

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 _____, 2005, ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation. A copy of the Baseline Documentation is on file with both Grantor and Grantee and by this reference made a part hereof. This will be an accurate representation of the property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. Grantor and Grantee have acknowledged in a signed statement, a copy of which is attached hereto as Exhibit B, that the Baseline Documentation represents the condition of the Property at the time of conveyance; and

WHEREAS, Grantor intends, as owner of the property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

WHEREAS, Grantors have specifically requested that the value of donated interests at transfer be used as a non-federal match for the Forest Legacy Program; and

WHEREAS Grantee is a governmental unit qualified for holding Conservation Easements under Section 170(b)(1)(A)(v) of the Internal Revenue Code and Title 57, Chapter 18 of the Utah Code; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and other good and valuable consideration and pursuant to the laws of the State of Utah and in particular Chapter 18, Title 57 of the Utah Code, Grantor does hereby voluntarily grant and convey to Grantee a conservation easement ("Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained predominantly in its natural, forested, open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities as are consistent with the purpose and provisions of this Easement, subject to all existing rights and encumbrances of record..

2. Authority. 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).

3. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

A. To preserve and protect the Conservation Values of the Property;

B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors except in emergencies or cases of suspected deliberate violations, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property;

C. To prevent any activity on or use of the Property that is materially inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use;

D. To review, comment upon, approve or object to any proposed plans relating to prohibited uses and permitted uses as set forth below; and

E. To place signs on the Property which identify the Property as being protected by this Easement. The number and location of the signs are subject to Grantor's approval, which will not be unreasonably withheld.

4. Prohibited Uses. Subject to all existing rights and encumbrances of record, any activity on or use of the Property materially inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. Subdivision. The Property shall not be subdivided into smaller parcels for any purpose.

B. Structures and Improvements. Except as expressly provided for herein there shall be no building, structure, or other improvements of any kind, temporary or permanent, constructed or

maintained on the property including, but not limited to, houses, towers, satellite dishes, sheds, tanks, mobile homes, dams, impoundments, septic systems, tennis courts, swimming pools, docks, aircraft landing strips, and communication equipment.

C. Mineral Development. Subject to existing rights of record, no surface mining shall be permitted. The prospecting, mining, and removal of any subsurface resources, including oil, gas, geothermal, and minerals are subject to the following terms and conditions:

(1) Only as much of the surface of the Property shall be occupied, used, or disturbed as is necessary in bona fide prospecting for, drilling, mining (including the milling or concentration of ores), and removal of subsurface resources.

(2) All structures, other improvements, and materials shall be removed from the lands within one year after the date of termination of the operations.

(3) All reasonable provisions shall be made in accordance with applicable federal, state, and local laws and regulations to dispose of all tailings, dumpage, or other deleterious materials or substances in such manner as to prevent obstruction, pollution, or deterioration of water and other natural resources.

(4) Upon completion of operations, the land, including but not limited to the surface of the Property, shall be reclaimed to its original contours and re-vegetated.

(5) The Grantor shall provide a bond in sufficient amount as determined necessary by the State of Utah to guarantee compliance with the requirements of this section.

D. Topography Modification. Changes in the existing general topography of the landscape or land surface of the Property, excluding minor changes as a result of activities expressly permitted herein, are prohibited unless such changes were caused by the forces of nature.

E. Waste Disposal and Hazardous Materials. No portion of the Property shall be used for dumps, landfills, or the storage or deposit of waste materials of any kind. Placing, filling, storing or dumping on the Property of trash, debris, refuse, vehicle bodies, junk or waste is prohibited. No portion of the Property shall be used for dumping, depositing, abandoning, discharging, storing, maintaining or releasing any gaseous, liquid, solid, radioactive or hazardous waste materials or pollutants of whatever nature on, in or over the ground or into the subsurface or groundwater of the Property. Disposal of any waste materials generated by activities expressly permitted herein shall be in accordance with applicable state laws. Slash and other debris associated with timber harvesting activities shall be disposed of according to standard forestry practices. (This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a “responsible party” under Comprehensive Environmental Response, Compensation, and Liability Act CERCLA or similar federal or state statutes.)

F. Industrial, Commercial and Residential Activities. Except for uses permitted in section 5 herein, the Property shall not be used for industrial, commercial or residential activities.

G. Game Farming or Game Farm Animals. Grantor will not construct or operate a game farm on the Property, nor will grantor raise or hold game farm animals on the Property. “Game farm animals” include those animals regulated or prohibited by the Utah Legislature, the Division of Wildlife Resources, or the Department of Agriculture and Food.

H. Non-native Species. Grantor will not introduction or release of nonnative or non-naturalized plant or animal species, with the exception of agricultural crops identified in the Baseline Documentation.

I. Commercial Feed Lot. Grantor will not establish or maintain any commercial feedlot on the Property. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed, confined area or facility, within which the land is not grazed or cropped annually, used for purposes of engaging in the business of receiving and feeding livestock for hire.

J. Signs and Billboards. No sign or billboard shall be placed on the Property, except to state the name and address of the Property owner and manager; to advertise on-site activities which are permitted on the Property; to advertise the sale or rental of the Property; to identify natural environmental features; to give road or trail directions; or to control unauthorized entry or use of the Property. Signs shall be no larger than fifteen (15) square feet in area. This paragraph shall not prohibit Grantee from displaying such signs as it may customarily use to identify lands under conservation easement and the terms of such conservation easement; provided however, that the location of any such signs placed by Grantee shall be subject to receipt of Grantor's prior approval for same.

K. Utility Rights-of-way. Subject to existing rights of record and Section 5 of this Easement, no utility rights-of-way shall be located within the Property after the date of this instrument unless such utilities are necessary for a permitted use and are located underground. Grantor shall restore and reseed all lands disturbed by such utility systems.

L. Water Rights, Alteration of Watercourses and Topography. Grantor will not change, disturb, alter, excavate, or impair any watercourse, surface or subsurface water systems, wetland, or the topography of the ground on the Property, except as authorized in the Easement or the Forest Stewardship Plan. Removal of groundwater for use off of the property including, but not limited to the sale, removal, or transfer of water rights and shares for use off of the Property, is not allowed unless expressly agreed to by Grantee. Grantor will not allow uses of the Property that would alter the topography, water systems, wetlands, or habitat on the Property except to the extent provided in the Reserved Rights section below.

Grantor will not allow uses of the Property that would be detrimental to water quality or that would permanently alter the normal water level and/or flow of surface or groundwater, except as is reasonable to carry out the ranching and other activities of the Property.

M. Mining, excavation. Subject to existing rights of record, there shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of Sections 5 a, c.

5. Reserved Rights. Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved.

A. Forest Management. Except as prohibited in this Easement, forest management activities are permitted on the Property in accordance with all federal and state laws and regulations, and in accordance with an approved Forest Stewardship Plan (FSP), the general parameters of which are set forth in Exhibit C attached hereto and incorporated herein by reference, and the State of Utah’s Forest Water Quality Guidelines contained in the document, “Nonpoint Source Management Plan for Silvicultural Activities”. Sound management practices, in accordance with the Forest Stewardship Plan, must be maintained to achieve a healthy, sustainable forest.

Grantor may cut trees for personal use on the Property and cut and gather dead, dying and down trees for firewood for use on the Property. Personal use includes firewood, Christmas trees, posts and poles. Prior to implementing recommended practices outlined in the FSP, Grantor must consult with Grantee. Implementation of projects or prescriptions identified in the FSP require the involvement of a resource management professional.

B. Leases, Permits and Related Transient Structures. The Grantor reserves all rights for the following activities: grazing, hunting, trapping, fishing, non-commercial recreational, non-commercial educational and charitable uses of the Property, and to issue leases, contracts or permits for such purposes and to collect money for same, and for other activities that do not adversely impact the Conservation Values of the Property. Grantor shall be permitted to erect transient structures solely for the purpose of engaging in the reserved rights as set forth in this subparagraph. A “transient structure” for purposes of this Easement shall mean a nonpermanent, removable structure erected for that period of time during a year in which the reserved right use under this subparagraph is engaged in, and in no event shall a transient structure be permitted to remain on the Property for a period of a year without being removed for a period of at least three (3) months.

C. Hunting and Fishing. Hunting, trapping and fishing of wild game animals is permitted on the Property only to the extent such activities are consistent with state and federal laws and regulations. The intent of this provision is to permit levels of hunting, trapping and/or fishing which are not detrimental to sustainable levels of wildlife and fish populations. The parties agree and acknowledge that hunting may be a desirable management tool to balance wildlife numbers with range and habitat condition.

Grantor may use the Property to participate in the cooperative wildlife management unit program, as described in Title 23, Chapter 23 of the Utah Code, or other similar program. Grantor may also require compensation from persons desiring to enter the Property for purposes of recreational hunting, trapping or fishing wild game animals, provided such activities are consistent with state and federal laws and do not materially impair the Conservation Values sought to be protected in this Easement.

(include if applicable)

D. Limited Building Right. The Grantor reserves the right to construct structures on the Property as follows:

(1) Any building to be undertaken pursuant to this reserved right of Grantor shall occur only on those portions of Section __, Township __, Range __; Section __, located west of the east Fork stream in Section 1 and west and/or south of the Middle Fork stream in Sections __ and __ (the “Buildable Property”).

(or) an area of land to be used for the purpose of constructing and maintaining no more than one single-family residence with customary accessory structures, improvements, and utilities, included but not limited to a septic system, water well, driveway, and power and communication lines.

(2) A maximum number of ____ () residential structures and related outbuildings shall be permitted within the Buildable Property. Erection of the residential structures and related structures or other improvements shall be limited to an area (the “Buildable Area”) of one contiguous acre.

(3) The construction of any structure shall be subject to all terms and conditions of this instrument.

(4) In no event, shall any commercial uses be allowed in connection with the residential structures.

(5) No residence shall exceed thirty (30) feet in height or exceed a total ground floor area of _____ square feet measured by the footprint of the building, exclusive of porches, decks and garages.

(6) Only non-habitable outbuildings reasonably necessary and appurtenant to residential uses (utility shed, garage, one barn or stable) shall be permitted, and such outbuildings shall not exceed fifteen (15) feet in height and 1000 square feet in total area, with an addition of 1000 square feet of total area horse and animal uses which are permitted.

(7) Any residence or outbuilding allowed and constructed shall be set back from the ingress and egress roadway a minimum of fifty (50) feet.

(8) Exterior features shall be constructed of non-reflective material and painted or maintained with earth-tone colors found in the surrounding environment. Primary colors or white shall be prohibited.

(9) Restrictions on the heights of structures and improvements shall be measured vertically from the natural grade of the land, which shall be generally that grade which existed as of the date of this instrument, to the highest point on the structure. No tower, structure or other man-made object shall exceed 30 feet in height.

(10) Any roadway used for ingress and egress to any Buildable Area shall be dirt or gravel or similar surface. No paving with hot or cold press asphalt or other similar impervious surface shall be permitted. Maintenance and improvements of existing roads and trails is permitted, provided that Grantor shall not have the right to pave any such existing road or trail with pavement, concrete, or any other hard impervious material unless approved by the Grantee.

(11) The removal of sand and gravel for use on the roads of the Property or for agricultural uses on the Property is allowed provided that:

(a) Such removal does not violate the prohibition on surface mining (within the meaning of Section 170(h)(5)(B) of the Internal Revenue Code and regulations promulgated thereunder);

(b) Such removal does not damage any significant conservation interest;

(c) Any gravel removal sites are recontoured and revegetated upon cessation of use;

(d) No gravel may be taken from any location near a watershed in such a manner as to cause a demonstrable decrease in water quality or stream flow.

E. Ranching Facilities. Grantor may maintain, replace, and repair, for ranching and recreational purposes, the fences, roads, corrals, barns and sheds, and other improvements located on the Property as of the date of this Easement, as identified in the Baseline Documentation. Grantor may maintain, replace, and repair the existing fences, roads, corrals, barns, sheds and other improvements identified in the Baseline Documentation, as may be necessary for ranching and the other uses permitted by this Easement, provided such fence, road, corral, barn, shed, or improvement is maintained, replaced or repaired in its original approximate size and general location. If any or all of such facilities are removed or destroyed, Grantor may replace them with similar structures of the same approximate size in the same general location.

Grantor may construct additional fences, roads, corrals, barns, and sheds as may be necessary for ranching and the other agricultural uses permitted by this Easement upon prior written approval by Grantee, as provided in Section 6 of this Easement. Grantor may construct fences along the exterior border of the Property without prior approval of Grantee. Drift fences may be constructed as necessary to control drifting snow. Big game proof fences are permitted around harvested crops (e.g. haystacks) or domestic gardens. No other big game proof fences will be constructed on the Property or on the exterior boundary of the Property.

Replacement or repair of existing fences within the Property boundaries and construction of new fences on the Property's exterior boundary shall be constructed in such a manner and with such materials as not to unduly endanger wildlife safety or to materially inhibit wildlife movement. Grantee's prior written approval, consistent with Section 6 of this Easement, must be obtained prior to replacing, repairing, or constructing any fencing on the Property that unduly endangers wildlife safety or that materially inhibits wildlife movement.

F. Ranching and Farming Activities. Grantor may use the Property for historical or common ranching and farming activities, including grazing, feeding, breeding, raising, and managing livestock, provided these activities do not materially jeopardize the wildlife habitat values. Generally, the term "livestock" means traditional livestock. Grazing and pasturing, on the entire Property, of cattle, sheep and horses is allowed provided that range conditions shall be maintained at, or improved from, those documented in the attached Baseline Documentation. Grazing of privately owned wildlife, including but not limited to bison, elk, or deer is prohibited. Grantor may also use the Property to grow suitable grains, hay and other crops that have historically been cultivated on the Property.

Good range stewardship and proper management of domestic livestock are integral to the conservation goals of this Easement. Grazing shall meet Natural Resource Conservation Service Prescribed Grazing Standards to insure that use will not degrade range health and will result in a static or upward range trend.

In cases where a Grazing Management Plan (GMP) is required, it shall be prepared, completed, and incorporated into this Easement. A GMP may be modified or created following the execution of this Easement where changing needs and uses precipitate grazing practice regulation to ensure compliance with the terms of this Easement and protection of the Conservation Values identified therein. The GMP will describe appropriate use levels, seasons of use, kinds of livestock that will be

grazing and necessary management practices. The GMP must meet all applicable state and federal laws, policies, guidelines, and regulations.

G. Defensible Space for Fire Protection. Any existing or new structure will require vegetation management to reduce fire intensities. The recommended treatment of vegetation is dependent on fuel type (kinds of trees/shrubs/grass) and slope. Refer to “Living With Fire, A Guide for the Homeowner” for detail in creating and maintaining defensible space (available from the Division of Forestry, Fire and State Lands) or contact a resource management professional.

H. Agricultural Chemicals. Use of agricultural chemicals is permitted for the following purposes and under the following conditions:

(1) For the control of noxious weeds, other invasive exotic plant species and plants toxic to domestic livestock; provided that chemical herbicides may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control. Herbicide shall not be applied by aerial spraying, except with the prior approval of Grantee.

(2) For the control of agricultural, forest, or rangeland pests; provided that chemical biocides may be used only when no other reasonable and generally accepted method of control is effective, that the biocide is used only in those amounts and with a frequency of application constituting the minimum necessary to accomplish reasonable agricultural and residential purposes, that the biocide has minimal adverse effects on nontarget species of plants or animals. The biocide shall not be applied by aerial spraying, except with the prior approval of Grantee.

(3) For fertilizing crops; provided that the use of fertilizer does not adversely affect the aquatic or terrestrial ecosystems in a significant manner.

6. Review of Grantor Plans Pursuant to Prohibited Uses and Reserved Rights. Before undertaking any activity pursuant to any reserved right under Section 5 above or any exception to a prohibited use under Section 4 above, Grantor shall submit to Grantee a detailed written plan describing the undertaking. Grantee shall have a period of forty-five (45) days from receipt of said plan to review said plan and approve or make objections to the same. All such objections shall be based upon inconsistencies between the plan and the purpose of this Easement or the Conservation Values of the Property. If within said 45 day period, Grantee makes no objections, then Grantee shall be deemed to have approved said plan, but nothing else not contained in the plan. If Grantee raises objections, the parties agree to meet and resolve in good faith all such objections prior to Grantor undertaking such development. If no agreement can be reached between the parties regarding the plan despite use of the parties’ best efforts to do so, either one of the parties may submit the matter to binding arbitration. Any matter submitted to arbitration shall be submitted to and heard by the Salt Lake City Office of the American Arbitration Association in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association.

7. Grantee’s Facilitation and Enhancement of Conservation Values. Nothing set forth herein shall prevent either party from seeking to facilitate or enhance the Conservation Values of the Property or the purposes of this Easement. Before undertaking any such facilitation, improvement or enhancement of the Conservation Values, Grantee shall prepare and submit to Grantor a detailed written plan describing same. Grantor shall have a period of forty-five (45) days from receipt of said plan to review said plan and approve or make objections to the same. All such objections shall be based upon inconsistencies between the plan and the purposes of this Easement and the Conservation Values of the

Property; provided however, that such enhancements shall not be in derogation of the reserved rights or the exceptions to the prohibited uses reserved to Grantor in this Easement. If within said 45 day period, Grantor makes no objections, the Grantor shall be deemed to have approved said plan, but no other matters except those set forth in the plan. If Grantor raises objections, the parties agree to meet and resolve in good faith all such objections prior to Grantee undertaking such development.

8. General Agreed Parameters for Certain Types of Improvements and Uses. The parties agree to the following matters with regard to particular types of possible improvements or uses of the Property:

A. Roads. The parties agree that any road which is permitted and constructed will be constructed in such a fashion and manner so as to:

(1) minimize the width and length of such road;

(2) maximize the ability of the road to be reclaimed and returned to a natural state when it is no longer required or needed;

(3) minimize the road's impact on the Conservation Values of the Property.

B. Structures and Other Improvements. The parties agree that any structures or other improvements which are permitted and constructed will be constructed in such a fashion and manner so as to minimize the structure's impact on the Conservation Values of the Property.

9. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

10. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Title 57, Chapter 18 of the Utah Code, or Section 170 (h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of ***** County, Utah.

11. General Provisions.

A. Duration of Easement. This Easement runs with the land and shall continue in perpetuity and shall bind Grantor and all future owners, assigns, and tenants of the Property.

B. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

C. Taxes. Grantor shall pay, before delinquency, all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by competent authority (collectively

“taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

D. Maintenance. Each party shall bear sole responsibility for any cost or expense reasonably required for the maintenance of any structure, building, road, fence or other improvement or enhancement made to or existing on the Property by that party.

E. Reversion. The Grantee 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 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.

12. Violations and Remedies. If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the property so injured. If Grantor fails to cure the violation within 30 days after receipt of notice from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing such violation within the 30 day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. Actions filed by Grantee may include, but are not limited to, enjoining the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, environmental or resource values, and to require the restoration of the Property to the condition that existed prior to any such injury. Grantor does not have the right to harvest timber on the property except as specifically allowed in the Forest Stewardship Plan. Without limiting Grantor’s liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the property, Grantee may pursue its remedies under this paragraph.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR

By: _____

Name: _____

Title: _____

Date: _____

GRANTEE

STATE OF UTAH, by and through the
Department of Natural Resources, Division of
Forestry, Fire & State Lands

By: _____

Name: _____

Title: _____

Date: _____

State of Utah)
) ss
County of Salt Lake)

On this ___ day of ____, in the year 2005, before me _____, the undersigned notary public, personally appeared _____, personally known to me to be the person who executed the within instrument.

Notary Public

State of Utah)
) ss
County of Salt Lake)

On this ___ day of ____, in the year 2005, before me _____, the undersigned notary public, personally appeared _____, Director, Division of Forestry, Fire and State Lands, Department of Natural Resources, State of Utah, personally known to me to be the person who executed the within instrument.

Notary Public

**SCHEDULE OF EXHIBITS TO DEED OF CONSERVATION EASEMENT
(FOREST LEGACY)**

- A. Property Description
 - B. Acknowledgment of Baseline Documentation Report
 - C. Parameters for Stewardship Plan (including forest and range/agricultural parameters)
-

**EXHIBIT A TO DEED OF CONSERVATION EASEMENT
(Property Description)**

A tract of real property located in ***** County, Utah, described as follows:

EXHIBIT B TO DEED OF CONSERVATION EASEMENT
(Baseline Documentation)

Acknowledgment of Baseline Documentation Report

Grantor and Grantee acknowledge that each has read the “ (Property) _____ Documentation Report”, Baseline Documentation dated _____, 200__, and each acknowledge and agree that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

GRANTOR

GRANTEE

STATE OF UTAH, by and through the
Department of Natural Resources, Division of
Forestry, Fire and State Lands

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Title: _____

Date: _____

EXHIBIT C TO DEED OF CONSERVATION EASEMENT
(Parameters for Stewardship Plan (including forest and range/agricultural parameters))

3.6- Baseline Report

Baseline Documentation Reports General Outline

All items below must be provided in the documentation report. However, the volume and specificity of information required by the following list will vary depending on the terms of the easement and the conservation objectives at the site. The intent of this format is to allow flexibility in the documentation technique and to correlate the quantity and nature of the documentation to the terms of the easement.

INTRODUCTION

I. Title Page: Title of Easement and all names the Property is known by, date of Baseline Documentation Report (BDR), names and affiliation of field staff, and name of state lead agency.

II. Ownership Information: List the property owner's name(s), address and phone number contact information). Also include names and phone numbers of any land managers, caretakers or gatekeepers.

Succinctly describe the forest management and land conservation goals the land owner hopes to achieve. Sources for this information are the Forest Stewardship Plan, the FLP application and the land owner.

III. Purpose of the Conservation Easement: This sets the stage for the report, and summarizes the purpose of protecting the property (i.e., recite conservation values as stated in the easement document). Include a summary of reserved rights and restrictions. At a minimum, all FLP conservation easements will restrict development and subdivision for the purpose of protecting environmentally important forests from conversion to non forest use. List any additional restrictions found in the conservation easement.

The purpose of this section is to aid the state lead agency in monitoring the property by providing them with a quick summary of the terms of the conservation easement. Please note that this section is meant to be a summary of portions of the Deed of Conservation Easement, which is a legal document, and that this section may not fully describe the exact legal conditions of the conservation easement.

IV. Purpose of Baseline Inventory. State the purpose of the baseline inventory report: namely, to identify and document the condition of the natural resources and conservation interests associated with the property at the time the conservation easement is acquired. In the event that a controversy between the land owners arises with respect to the property's biological or physical resources, the baseline report may be used by the aforementioned parties to resolve such a dispute.

DESCRIPTION OF PROPERTY

V. Property Location and Maps:

- Directions to property from a well known landmark or agency office with the name of the county need to be included on the map.
- Vicinity map that displays regional land use and ownership patterns surrounding the property.
- Aerial photo, USGS quad, watershed.

- Acres of the conservation easement and of the entire ownership if different.
- Legal description of the property, property deed/book page and the recording date of the easement.
- Provide a general description of the landscape and surrounding area, including adjacent land use.

Create a primary map of the entire easement property and include:

- Property boundaries
- Topography
- Water bodies and water courses
- Roads and trails (if applicable)
- Fences, utility lines and dumps (if applicable)
- Lakes, ponds, dikes, impoundments and watercourses
- Existing structures and cemeteries (if applicable)
- Special use zones (areas cut out of easement and/or reserved for specific uses in the conservation easement)
- Adjacent property ownership
- Graphic scale, north arrow, and legend using a scale such as 1"=660'

Sources for this information are the approved land appraisal, USGS topographic quads, the Forest Legacy Information System (F.L.I.S.), county courthouses, and agency offices.

VI. Land Use and Management:

Obtain information from the landowner on the history of the property and its past land use, if available. Describe current land use and forest practices if any. Write a summary of pertinent history of the property including changes in land uses. This information typically comes from the Forest Stewardship Plan and other existing management plans such as prescribed burning plans, and agricultural plans.

Provide an overview of land ownership and use patterns for the public and private property owners adjacent to the easement property and discuss the land uses and condition of these lands. This includes federal, state, local, private, corporate and non-corporate private land holders. A discussion of land uses should include past, present, and future land uses of these properties and should focus on those uses that are likely to affect the easement property. When possible, this section should also describe the level of interest each land owner has shown in protecting their lands with a conservation easement or other conservation tool.

VII. Forest Use:

Measure the amount of forest cover and describe the forest use. If the conservation easement describes any restrictions related to forest use such as the size of clearcuts, measure and describe the current condition. If the conservation easement mandates the use of Best Management Practices (BMPs), measure and describe streamside buffers, wetlands, and other relevant resources. Only measure resources specifically mentioned in the conservation easement.

VII. Photo documentation: This is a photographic record of the protected property that is periodically updated. This section should include photos that are easily replicable (from roads or permanent features, or using GPS waypoints). Concentrate on creating photo documentation of those areas which might show changes such as access areas, boundary encroachment, and building envelopes. Create as many photos from a single point to reduce monitoring costs.

- Photos should be numbered and an azimuth direction should be included to note the direction the photo was taken.
- Include a photograph index with descriptions.
- Photo documentation map (note location of all photopoints, preferably on a survey)
- Include GPS boundary on handheld unit to aid in location of photopoints.

Signed Copy of Owner Acknowledgement of Condition (Property Condition Certification form):
This document acknowledges that the landowner agrees with the BDR and the condition of the property at the time an easement is placed on the property. Copies should be signed by the landowner and the state lead agency at closing.

3.7- Monitoring Form (Example from Utah)

Complies with Conservation Easement
Yes _____ No _____ Date _____

Monitoring Conservation Easements Monitoring Inspection Form and Photo Record

Name of Property: _____

Location: _____

Size in acres: _____

Date conservation easement acquired: _____

Today's date _____

Name and address of owner when easement created: _____

Name and address of present owner (if different) _____

Length of time in present ownership _____

1. Describe present uses of easement property:

Forestry (harvesting, reforestation, nursery) _____

Grazing _____

Ecosystem/species preservation _____

Scientific/educational _____

Wildlife/habitat management _____

Recreational (hiking, hunting, camping) _____

Residential (permanent residences, guest houses) _____

Industrial (mining) _____

Did you note any possible violations of the terms of the easement? Y N (circle one)

Be specific _____

2. Describe human caused alterations including location, extent, purpose, whether conforming or non-conforming:

Construction: _____

Excavation/Filling: _____

Road maintenance/improvement: _____
Other: _____
GPS information: _____

3. Describe natural alterations including location, extent:

Fire: _____
Flooding: _____
Landslide: _____
Erosion: _____
Vegetative: _____
Other: _____
GPS information: _____

4. Describe compliance with the Forest Stewardship Plan recommendations:

Are the terms of the conservation easement being observed? _____ Y _____ N _____ (circle one)
Is the landowner following the Forest Stewardship Plan? _____ Y _____ N _____ (circle one)
Is the landowner following the Forest Water Quality Guidelines? _____ Y _____ N _____ (circle one)

Comments: _____

Monitored by: _____
Address: _____

Phone: _____
Signature: _____
Date: _____

Area Manager: _____
Signature: _____
Date: _____

Time spent on the property: _____

Number of the following attached to this report:

aerial photo _____
ground photos _____
maps _____
illustrations _____
additional pages _____
other _____

Landowner: _____
Address: _____

Phone: _____
Signature: _____
Date: _____

3.8- Basic Components of a Stewardship Plan

General Property Description

A paragraph describing the location, topography, current management situation, major timber types, and other notable features that are unique, sensitive and/or special.

Specific Resource Objectives obtained from the landowner for the resources present on the property.

These resources should be protected, managed, maintained and enhanced: (a) wildlife; (b) timber; (c) aesthetics & recreation; (d) soil; (e) water

Resource Evaluation for each of the resources present.

Timber - include species, age, density / stocking, site index or productivity potential
Wildlife - describe existing populations, note potential for other populations and habitat potential
Soils - include soil series, interpretation, productivity potential, and limitations
Water - identify category, condition and protection needs
Aesthetics & Recreation - what are the current uses, what is the potential for other uses Forest
Health concerns, if applicable

Management Recommendations / Prescriptions for Each Area based on the owner's objectives

- What specific practice / treatment is needed?
- How practice/treatment is to be carried out, including details of implementation
- Who will be or who is available to carry out this practice/treatment
- When is the best time frame to implement this practice/treatment?
- Why is this practice needed? (How will it meet the owner's objectives)?

Schedule of Management Activities

This may not be needed on properties with few recommendations. On larger, more complex properties with multiple recommendations over several years this schedule will help the owner summarize the recommendations for the entire property and install the practices in a logical sequence over the next ten-year period.

Map and/or Photograph of the Stewardship Forest

(complete with scale, north arrow, legend) to identify and delineate:

Forest types / timber stands
Streams, water bodies and other important water features
Nonforested areas (fields, pastures, orchards, home sites, etc.)
Key wildlife areas and features
Recreational and/or aesthetic areas
Unique and sensitive features (wetlands, T&E species, cultural resource sites, etc.)
Other important features as needed (forest roads and trails, gates, fences, landmarks, etc.)

Soils Map and Legend

Soil maps should be included on all properties as a measure of site productivity but also to highlight significant limitations due to soil and/or site factors.

Always, include an aerial photo or other map that shows the location and boundaries of the various soil types identified above.

Record of Activities

Include a blank form for the owner to record the practices and treatments that were installed.

Optional Items

Include a cover sheet when appropriate and supporting reference materials.

Tip: Here is the best place to supplement the plan with information about Best Management Practices and other required aspects of your conservation easement (Buffers, aesthetic concerns, boundary marking protocol, etc.)

3.9. Acquisition Check List

Date Completed	Action Required
	1. Landowner information (name, address, phone)
	2. Verify the tract is located within an approved Forest Legacy Area
	3. Nomination Form
	4. Written survey of the tract and map
	5. Landowner Inspection Consent Agreement
	6. Evaluation Criteria
	7. State Forest Stewardship Coordinating Committee recommendation
	8. Amicable agreement/non-condemnation letter sent to the landowner (sometimes application includes this notification.)
	9. Determination in writing, by State lead agency that mineral rights either will not interfere with FLP purposes or need to be acquired
	10. Deed of Conservation Agreement / Deed for Fee that includes the following
	a. A Forest Legacy Purposes clause
	b. The reversion of funds for Forest Legacy inconsistency clause
	c. Assure a conservation easement meets purposes of FLP
	d. Assurance that the rights acquired are perpetual
	e. Assure that a governmental entity holds interests acquired, and that any assignment of rights acquired is only to a governmental entity
	11. Additional warranty deeds, covenants, restrictions
	12. Tracking/documentation of negotiation steps
	13. Appraisal
	14. Qualified Review Appraisers report that the appraisal meets federal appraisal standards AND the qualifications of the review appraiser (federal payment may be no more than the appraised value)
	15. Assure title is free and unencumbered or that title insurance is secured for the full value of the encumbered property
	16. Notification of county or local government
	17. Forest Stewardship Plan or equivalent
	18. Baseline documentation
	19. Closing statement
	20. Copies of check
	21. Copies of grant reimbursement or expenditure
	22. Landowner correspondence
	23. Press Release or public notification that Forest Service provided money for acquisition
	24. Monitoring records and history (Periodic, not less than annually)

3.10. Donation Check List

Date Completed	Action Required
	1. Assure the donation contributes to the objectives and priorities of the State Forest Legacy Program as set forth in the Assessment of Need.
	2. Letter from landowner received stating they want the donation to be counted as a non-federal match for the Forest Legacy Program at time of transfer
	3. Document location of donation and that it is in a qualified area (e.g. Forest Legacy Area, National Forest boundary...)
	4. Deed includes the Following
	a. A Forest Legacy Purposes clause
	b. Extinguishment clause stating any proceeds will be invested in land that will meet the same goals
	c. Assure donation has 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 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.
	6. Value of donation is established with an appraisal acceptable to the IRS
	7. Title is free and clear or title insurance has been obtained
	8. Assure the donation has not been previously credited towards any other Federal program's non-federal match
	9. The parcel is adequately described or surveyed
	10. State Lead Agency has approved in writing that the donation contributes to the cost-share match
	11. Forest Stewardship Plan completed

3.II. FLP Documentation Requirements (Example from Massachusetts)

The following is information required during the life of and at the close of any State Grant Option of the Forest Legacy Program. Please maintain contact with the DCR / BOF Forest Legacy Program Coordinator and DCR / Finance Officer during the life of the grant so that the proper documentation will be available at the time of the grant closing.

Project proponent must provide the following during the life of the grant and/or at the close of the grant:

1. **Quarterly Reports** (due dates: January 1st, April 1st, July 1st, October 1st). Project proponents will complete a Quarterly Report for each quarter during the life of the Grant. The MA Forest Legacy Program Coordinator will e-mail project proponent a blank copy of the report form each quarter which will be completed by the proponent and returned via e-mail) within 7 days of notification.
2. **Final Report** (due at grant closing). One page narrative that describes exactly **what** was acquired (Fee, CR, acres, etc.), **when** acquired (date), **where** the property is located (State, Municipality, Road, etc.) the **public benefits** as identified in the grant narrative (language used in narrative must be consistent with language in AON for the Forest Legacy Area in which the project/tract is located) and derived by the acquisition of the interests. It shall also include: evidence of **exact price paid**; identify **federal funds** and sources of **other funds** by amount; identify any **balances of federal funds available for deobligation**; and **attachments from items 4 – 17 below and items 1 - 5 below**.
3. A **copy of the conservation restriction** (to be developed by the state agency legal staff) for review by USDA/FS and DCR or DFG (which agency will hold the CR interests should be identified in the project proposal after consultation with the State Lands Committee and their approval to accept the CR) to see that the conservation restriction addresses the purposes identified in the State Assessment of Need and the grant narrative, and to ensure that the required language is included in the conservation restriction before it is finalized/recorded. **If the Fee or CR held by a non-profit is to be used as cost-share for the project, that deed and/ or CR must also be provided for review by USDA/FS and DCR or DFG before recording.**
4. A **copy of the recorded Deed (Fee)** if acquired by DCR, DFG, and/or a Municipality, and / or a **copy of the recorded Conservation Restriction/Easement**, and the specific location where recorded.
5. A copy of the Appraisal which meets federal appraisal standards completed by a qualified appraiser who must meet the qualifications set forth in the Forest Legacy Program Implementation Guidelines which can be found at: http://www.fs.fed.us/spf/coop/library/fpl_guidelines.pdf.
6. The **qualified review appraisers report** stating the appraisal meets federal appraisal standards. [The **statement** can appear as follows: "This appraisal meets the Uniform Appraisal Standards for Federal Land Acquisition (2000.)"] A qualified review appraiser must meet the qualifications set forth in the Forest Legacy Program Implementation Guidelines which can be found at: http://www.fs.fed.us/spf/coop/library/fpl_guidelines.pdf.
7. **Evidence of the qualifications of the appraiser and review appraiser** who determined the value of the lands or interests in lands being acquired. Both must meet the qualifications set forth in the Forest Legacy Program Implementation Guidelines. A letter from each (appraiser and review appraiser) which states that they meet the required qualifications identified in the "Forest Legacy Program Implementation Guidelines", June 2003, Appendix H which can be found at: http://www.fs.fed.us/spf/coop/library/fpl_guidelines.pdf. The review appraiser must also include a list of ..."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 reports for appraisal reports of properties similar in scope and complexity to the appraised property in the preceding three years." From this list the MA Forest Legacy Coordinator will randomly choose 3 and ask the Review Appraiser to send them to him. These letters must be provided directly to the MA Forest Legacy Program Coordinator. The evidence statement is not required when projects (generally exceeding \$1 Million or more) are assigned by the USDA Forest Service to be reviewed by a "Federal Review Appraiser".
8. **Photographs**: On-site photos (record key photo points, record distance and azimuth from structures or other fixed points, gps coordinates, and identify source (person who took the photo/picture), sign and date all photos).

9. **Aerial Photo(s)**. Identify source and date of aerial Photos.
10. **Map(s)** of each tract that support and depict the public benefits identified in the grant narrative. The Stewardship Plan map(s) may provide some or all of the maps needed. Include at a minimum: **locus map** (state map with tract(s) and Forest Legacy Area identified), **property map** with local roads (8 ½" x 11"), and USGS **Topographic map** at ~1:24,000. Also, include an assessor's parcel map if one exists. Identify source and date of maps.
11. **GIS Maps**, if applicable, that support and depict the public benefits identified in the grant narrative and project proposal such as BioMap, Living Waters, etc. They shall include a legend that identifies the source(s) of data from which they were derived. Identify source and date of maps.
12. **Survey Plan(s)** if one exists. Identify source and date of plans.
13. **Stewardship Plan** or multi-resource management plan for each tract. Plan is prepared by the landowner with objectives that correlate to the Forest Legacy Areas AON and the Grant Narrative. Contact Forest Legacy Program Coordinator for a copy of directions for their preparation and forms to be used or go to: <http://www.mass.gov/dcr/stewardship/forestry/service/lawsnforms.htm> and download the directions, blank plan forms, etc...on the DCR / Bureau of Forestry web page.
14. **Baseline Documentation**: Shall include items 3 – 5 and items 7 - 12 and additional items found in Appendix J. – “Sample Content for Baseline Documentation” of the “Forest Legacy Program Implementation Guidelines” which can be found at: http://www.fs.fed.us/spf/coop/library/fpl_guidelines.pdf. that provides a list and other sources of information on what constitutes baseline documentation”. Bargain sales and donations, if deductions are taken by landowner, must meet USC 26 170(h). IRS holds the donor responsible for providing sufficient baseline data to establish the condition of the property at the time of the gift.
15. **Evidence** that the Forest Service **Forest Legacy Program was publicly credited** with providing funds for the project such as newspaper clippings and evidence (photograph with location identified on back of the photo) that a Forest Legacy **sign** (supplied by the Forest Legacy Program Coordinator) has been posted on the property.
16. **Monitoring**: If the annual monitoring will not be conducted by the State (Department/Agency) that holds the Forest legacy Interests, then the Forest Legacy Area **sponsor and proponent must identify 3rd party**, and assist the Forest Legacy Coordinator in **establishing an MOU with a 3rd party**, that will be responsible for annual report on monitoring of Conservation Easement/ Restriction. The State (Department/Agency) or the 3rd party with whom the MOU would be established with **shall be identified and a commitment letter included in the original project proposal**.
17. **Donations of Land**: Donations of land that are used as cost-share must meet all of the same requirements identified in the “Forest Legacy Program Implementation Guidelines”, June 30, 2003, section XIII. FLP “Cost Share Requirements”, pages 16 -17which can be found at: http://www.fs.fed.us/spf/coop/library/fpl_guidelines.pdf and include the same documentation as required for a Forest Legacy Program funded Forest Legacy Project.

The DCR / BOF and Finance Office will provide the following to the USDA / FS Newtown Square Office for the grant closeout report along with items 4 – 17 above above:

- 1) **Name of the governmental entity** (DCR / DFG / Municipality) that holds the lands or interests in lands.
- 2) The specific **State (Department/Agency) and /or Municipality (Department/Commission) that will manage the fee or conservation easement/restriction**.
- 3) A **copy of the letter sent to the landowner** notifying her/him of the **market value of their land** or interests in lands, that **sale of the property is voluntary**, and that the land or interests in land **will not be purchased if amicable negotiations do not result in an agreed upon price**. Letter to the landowner comes from the agency that will hold the interests.
- 4) **Statement** of the **cost-share** (approximately 1/3 the amount of federal funds used). Statement comes from the agency that will hold the interests.
- 5) **Copy** of final title insurance policy or **letter that the State will take the risk associated with title insurance** (Forest Service recommends that title insurance be purchased). Letter or title insurance policy comes from the agency that will hold the interests.