



United States Department of Agriculture

# Forest Legacy Program Implementation Guidelines



Forest Service

FS-1088

May 2017

# Part V



# Part V – Land Acquisition Process and Requirements

## 13. Due Diligence for Acquisition

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

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

### Title Search and Title Insurance

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

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

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

### Legal Description/Survey

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

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

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

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

### **Phase I Environmental Assessment**

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

### **Minerals Determination**

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

### **Document Preparation and Legal Advice**

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

### **Conservation Easement and Deed Language Drafting**

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

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

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

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

### **Baseline Documentation**

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

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

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

### **Multi-Resource Management Plans**

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

### **Appraisal and Appraisal Review**

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

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

### **Amicable Agreement Acknowledgment**

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

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

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

## **14. Conservation Easement Language**

### **Overview**

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

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

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

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

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

## **Forest Legacy Program Conservation Easement Provisions**

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

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

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

### **A. Purpose and Authority**

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

### **B. Prohibition or Limitation on Subdivision**

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

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

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

### **C. Industrial or Commercial Uses**

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

### **D. Limitation on Structures**

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

### **E. Designated Improvement Areas (as Applicable)**

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

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

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

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



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

#### **F. Prohibition on Surface Disturbance**

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

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

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

#### **G. Duties of Owners**

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

#### **H. Multi-Resource Management Plan**

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

#### **I. Limits on Compatible Nonforest Use**

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

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

#### **J. Baseline Documentation**

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

#### **K. Right To Enter the Property for Monitoring**

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

#### **L. Enforcement Roles**

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

#### **M. Linear Nonforest Corridors and Other Easements**

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

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

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

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

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

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

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

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

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

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

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

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

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

[Article 3 language is for non-cost share]

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

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

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

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

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

[Article 3a language is for cost share]

**3a. Extinguishment.**

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

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

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

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

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

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

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

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

### **15. Fee Simple Purchase Deed Language**

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

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

\*Mandatory language appears below.

#### **A. Purpose and Authority**

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

**Example 1:**

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

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

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

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

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

**Example 2:**

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

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

**Example 3:**

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

## **B. Management Objectives**

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

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

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

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

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

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

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

## **D. Transfer and Disposal (mandatory language)**

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

### **Transfer Provision**

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



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

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

**Disposal held by State Lead Agency:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Disposal of a Cost-Share Tract**

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

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

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

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

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

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

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

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

## **16. Appraisal and Appraisal Review**

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

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

### **Appraisal and Review Process**

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

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

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

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

#### **Appraiser**

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

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

#### **Review Appraiser**

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

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

## **Evaluating Appraisal Risk Factors**

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

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

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

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

## **17. Multi-Resource Management Plans**

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

### **State Forester Review and Approval**

Multi-resource management plans must meet the following requirements:

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

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

### **Third-Party Certification**

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

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

### **Multi-Resource Management Plan Requirements for Conservation Easement Acquisitions**

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

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

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

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

### **Management Plan Requirements for Forest Legacy Program Fee Acquisitions**

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

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

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

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

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