

## **ATTACHMENT C: FOREST LEGACY PROGRAM AWARD PROVISIONS**

- A. **BACKGROUND.** The 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 establish the Forest Legacy Program to protect environmentally important forests areas that are threatened by conversion to non forest uses. This authority continues indefinitely. Through the 1996 Farm Bill (Federal Agricultural Improvement and Reform Act of 1996; Public Law 104-127; Title III - conservation; Subtitle G - Forestry; Section 374, Optional Grants for Forest Legacy Program), the Secretary is authorized, at the request of a participating State, to make a grant to the State to carry out the Forest Legacy Program in the State, including the acquisition by the State of lands and interests in lands. Forest Legacy Program delivery is guided by the national Forest Legacy Program Implementation Guidelines (revised 6/30/2003, amended 12/21/2011).
- B. **SUPPORT PROGRAM GOALS:** The Grant Recipient must ensure that all acquisitions conducted under this grant meets the conservation objectives and goals of the Forest Legacy Program, which can be found in the Forest Legacy Program's authorization, Forest Legacy Program Implementation Guidelines, and the State Forest Resource Assessment and Strategy (Forest Action Plan) and associated Forest Legacy Program Assessment of Need.
- C. **FUNDING:**
1. Funds under this Forest Legacy Program grant award must be used for the acquisition of lands or interests in lands and associated real estate transaction costs for projects and donations, including but not limited to appraisals including review appraisals (excluding appraisals and review appraisals for donations), minerals assessments, land surveys, baseline documentation, title reports, title insurance, and State's cost for conservation easement negotiation and drafting.
  2. Forest Legacy Program funds are prohibited from being used on (1) management of acquired lands or interests in lands including, monitoring of conservation easements, (2) enforcement actions, and (3) payment for appraisals of donated property when the donation represents the full and total value.
  3. For advanced payments, the Grant Recipient must notify the Forest Service's Forest Legacy Program Manager at least 60 days in advance of the acquisition closing date and submit all necessary documentation for final review and concurrence. Advanced payments must be approved by the Forest Service's Forest Legacy Program Manager and the funds cannot be made available to the Grant Recipient more than 30 days in advance of the acquisition closing date.
- D. **COST SHARE:**
1. Forest Legacy Program cost share requirements are that the federal funds cannot exceed 75 percent of the total project cost. The non-federal cost share may include cash, donation of land or interest in lands, and/or in-kind services and must be documented on a project basis.
  2. Any donation of land or interest in lands used for cost share for this Forest Legacy

Program grant must comply with the following requirements.

- i. The donation contributes to the objectives and priorities of the State FLP as set forth in the State Forest Resource Assessment and Strategy (Forest Action Plan) and associated Forest Legacy Program Assessment of Need;
  - ii. All or part of the tract being donated must be within the boundaries of an Forest Legacy Area;
  - iii. The donor documents their desire that value of the interests may be used as cost share for the FLP project;
  - iv. The donation of land or an interest in land must contain perpetual covenants to assure that the tract will be managed in a manner compatible with the goals for which the Forest Legacy Program and the specific Forest Legacy Area were established;
  - v. The donee (holder of donated rights) is a unit of government or a non-profit conservation organization (land trust) that meets the eligibility requirements for holding a conservation easement established by the Internal Revenue Service and has as its purpose the management of lands or interests in land consistent with FLP purposes;
  - vi. If the donation is in the form of a conservation easement then the deed needs to contain a provision that directs all of the easement holder's proceeds from a subsequent sale or exchange of interests in land be used in a manner consistent with the conservation purposes identified for the subject interests in lands;
  - vii. The respective portion of the donation must not have been previously credited towards any Federal program's nonfederal cost share; and
  - viii. The Grant Recipient approves the donation as contributing to the cost-share.
- E. APPROVAL OF PROJECT CHANGES. The Grant Recipient must submit in writing any changes to the project configuration as described in the grant narrative for approval to both the State Forest Stewardship Coordinating Committee and the Forest Service. Such changes could include, but are not limited to: changes in status of public access, change in proposed reserved rights by landowners, change in acreage, and change in conservation values of the property.
- F. PROGRAM REQUIREMENTS: The Grant Recipient shall ensure that all land(s) or interests in land(s) acquired under this grant, meet the following requirements:
1. Are located within the boundaries of an approved Forest Legacy Area as identified in the State Forest Resource Assessment and Strategy (Forest Action Plan) and associated Forest Legacy Program Assessment of Need.
  2. Prior to acquisition of a conservation easement, a forest stewardship plan or other multi-resource management plan will be prepared by the landowner and approved by the State Forester or her/his designee. A plan is not needed if the landowner does not retain the right to harvest timber or conduct other land management activities. This plan must include the environmental values to be protected, the management activities that are planned and how they affect the environment values identified (16 USC 2103 (d)(1)) (16 USC 2103 (i)). Modifications to the plan are to be agreed to by the State lead agency.

3. Ensure that the title is free and unencumbered and/or that title insurance is secured in the name of the Grant Recipient for the full value of the encumbered property. Identify any existing easements, covenants or long-term contracts, which are recorded or unrecorded, or any rights that may be held by a third party. Any encumbrance to the title must be deemed by the Grant Recipient as not affecting the purpose for which the land or interests in land is being acquired. Title insurance does not substitute for free and unencumbered title.
4. Evaluate any preexisting severed mineral reservations or leases and then make a determination as to whether the acquisition of mineral rights, prohibition on reserved areas, or an exclusion of the area that does not comply with FLP, would be necessary in order to protect the other rights that are being considered for acquisition. In some situations, it may be impossible to protect environmentally important forest areas without acquiring the mineral rights.
5. Notify the landowner in writing of the market value of the property, that eminent domain will not be used, and that the property will not be acquired if negotiations fail to result in an amicable agreement.
6. Complete a baseline documentation for each conservation easement tract and ensure it depicts the attributes of land on the day it is restricted by a conservation easement.
7. Ensure that the Grant Recipient or its assignee will monitor the lands annually for conformance with the terms of the conservation easement.
8. The consideration paid to any landowner must be no more than the market value of the conveyed lands or interests as determined by an appraisal that conforms to the most current version of the Uniform Appraisal Standards for Federal Land Acquisitions, and meet the following requirements:
  - i. Be completed by an appraiser licensed in the State and who meets the qualifications specified in the Forest Legacy Program Implementation Guidelines, Appendix H;
  - ii. The appraiser and a qualified review appraiser will engage in an initial consultation before the project appraisal takes place;
  - iii. The review appraiser will develop project specific appraisal instructions for the appraiser as a result of this consultation;
  - iv. The effective date of value should reflect current market conditions;
  - v. A qualified review appraiser will attest to Federal Appraisal Standard conformance; and
  - vi. The State may be asked to consult with a Forest Service qualified review appraiser prior to or during the appraisal process.

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

1. Clearly state the purposes for which the land is entering into the Forest Legacy Program and that the purposes are consistent with the Forest Legacy Program.
2. Require that a governmental entity must hold the lands or interests in land in perpetuity.
3. Consistent with the SF424d Assurance #3 of this grant award, include a statement stating that all land or interests in land acquired under this grant will not dispose of,

- modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. In addition, in the event the interests acquired with Forest Legacy Program funds made available through this grant are ever sold, exchanged, or otherwise disposed of, that the State shall reimburse the United States for the market value of the interests in land at the time of disposal, provided that the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of other equal valued consideration acceptable to the Secretary.
4. Require that no less than seventy-five percent of the lands or interests in lands are in forest cover or will be reforested within ten years. Up to twenty-five percent of the protected area may be compatible nonforest uses, including cultivated farmland, pasture, grassland, shrub land, open water, and wetlands.
  5. Require that the landowner must manage the property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program and that the landowner shall not convert the property to other uses.
  6. For each conservation easement tract, require that all forest management activities must be conducted in accordance with the approved forest stewardship plan or a multi-resource management plan, described above.
  7. Generally prohibit the subdivision of the encumbered land. If allowed, the easement should specify the number, sizes, and locations of divisions, and ensure that, when appropriate, the conservation easement will be rerecorded for all parcels at the time of subdivision.
  8. Generally exclude nonforest uses that are inconsistent with maintaining forest cover, and when allowed, these uses should be in a reserved area. Reserved Areas are designated areas where nonforest uses (e.g. house, barn, remote recreation camps, etc.) are or will be allowed, but are inseparable from the land holding and do not have a detrimental effect on the conservation easement values. These areas shall be defined and described in the conservation easement and may be restricted in terms of their use.
  9. Generally prohibit extensive surface disturbances including residential, commercial, and industrial development, and mining. Limited excavation of sand and gravel for on-site use for roads and landings may be allowed, and the conservation easement must be clearly describe the location and use.
  10. Pursuant to USDA Attorney guidance, there is to be no reference to carbon, or other ecosystem service credits in conservation easements.
  11. Ensure the right to enter the property to conduct annual monitoring of the conservation easement.

H. PROJECT CONCLUSION: The Grant Recipient shall complete the following actions upon completion of the Forest Legacy Project:

1. As a condition of this grant, the Grant Recipient may be required to publicly acknowledge (through news articles, posting of Forest Legacy signs on the land, and/or include in publications) the USDA Forest Service and specifically the Forest Legacy Program as the/a source of funding for this/these project(s).
2. Update the Forest Legacy Information System (FLIS) with the closing dates, final acreages and Forest Legacy payments and cost share information for the project.

3. Provide a Geographic Information System (GIS) shapefile in accordance with Forest Legacy Program data standard, of the rights acquired to the Forest Service.
4. Comply with the Forest Legacy Program record keeping requirements as outlines in Forest Legacy Program Implementation Guidelines, Appendix G.

I. POST-GRANT REQUIREMENTS: The Grant Recipient shall complete the following actions upon closing of the Forest Legacy Program grant:

1. The Grant Recipient or its assigns shall monitor and manage lands for conformance to Forest Legacy purposes and the conservation easement to which they are subject, periodically, not less than annually and in accordance with the Forest Legacy Program Implementation Guidelines.
2. As a condition of this grant the Forest Service may request an annual report on the status of monitoring and management of the lands or interests in lands that were entered into the Forest Legacy Program.

---

Date

---

Date

U.S. Forest Service,