STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS

REQUEST FOR PROPOSALS

CONSULTANT SERVICES TO IDENTIFY SUSTAINABLE INCOME/REVENUE OPPORTUNITIES FOR WAO KELE O PUNA
RFP No. OHA 10-02

NOTICE TO INTERESTED PARTIES

This solicitation is provided to you for information purposes. If interested in responding to the solicitation, you may choose to submit your offer on the downloaded document **provided** you register your company by mail or email for this specific solicitation. If you do not register your company, you will not receive addenda, if any, and your offer may be rejected and not considered for award.

To Register or Request a Copy of the Solicitation

Submit to: **Office of Hawaiian Affairs**
711 Kapi`olani Boulevard, Suite 500
Honolulu, Hawai`i 96813
Attn: Procurement Unit

Email address: emmittf@oha.org

Provide the following Information:

*Name of Company
*Telephone Number
*Name of Contact Person
*Mailing Address
*Email Address

TABLE OF CONTENTS

Section 1	Administration	Page 3
Section 2	Project Specifications and Requirements	Page 7
Section 3	Proposal Format and Content	Page 10
Section 4	Evaluation Criteria and Contractor Selection	Page 15
Section 5	Special Provisions	Page 17
	Attachment	

Section 1
Administration

1.1 INTRODUCTION

The Office of Hawaiian Affairs (OHA), Land and Property Management Program (T), is seeking consultant services to present to OHA's Chief Executive Officer and Trustees the possible sustainable income/revenue generation opportunities at Wao Kele O Puna, a 25,856 acre rainforest on Hawai'i Island. The land holds significant cultural and natural significance for Native Hawaiians and the Office of Hawaiian Affairs. The public purchase of the land was made possible through a partnership between the Office of Hawaiian Affairs, the Pele Defense Fund (PDF), the Hawaii Department of Land and Natural Resources (DLNR), the Trust for Public Land (TPL), and the United States Forest Service (USFS) of the United States Department of Agriculture (USDA). The funding for the purchase came from the USFS's Forest Legacy Program funded by a $3.35 million dollar congressional appropriation.

1.2 RFP ADMINSTRATION

This RFP is organized into five sections:

SECTION 1: ADMINISTRATION

Provides Offerors with information regarding administrative requirements.

SECTION 2: PROJECT SPECIFICATIONS AND REQUIREMENTS

Provides Offerors with a description of goods and/or services to be provided; and delineates OHA and Contractor responsibilities.

SECTION 3: PROPOSAL FORMAT AND CONTENT

Describes the required format and content for Offerors' proposals.

SECTION 4: EVALUATION CRITERIA AND CONTRACTOR SELECTION

Describes how proposals will be evaluated and lists evaluation categories.

SECTION 5: SPECIAL PROVISIONS

Describes procedures for selection and award of contract.

1.3 WEBSITE REFERENCES

The State Procurement Office (SPO) website is **www.spo.hawaii.gov.** (Note: Website addresses may change from time to time. If a link is not active, try the State of Hawai'i website at **www.hawaii.gov)**

	For	Go to
1	Tax Clearance Forms (Department of Taxation Website)	**http://www.hawaii.gov/tax/** click "Forms"
2	Wages and Labor Law Compliance, Section 103-055, HRS (Hawai'i State Legislature website)	**http://www.capitol.hawaii.gov/** click "Bill Status and Documents" and "Browse the HRS Sections."
3	Department of Commerce and Consumer Affairs, Business Registration	**http://www.hawaii.gov/dcca** click "Business Registration"
4	Campaign Spending Commission	**www.hawaii.gov/campaign**

1.4 ISSUING OFFICER

The Issuing Officer is responsible for administrating/facilitating all requirements of the RFP solicitation process and is the sole point of contact for Offerors from the date of release of the RFP until the selection of the successful Offeror. The Issuing Officer will also serve as the Contract Administrator responsible for "contractual actions" throughout the term of the contract. The Issuing Officer is:

Emmitt H. Ford, Jr.
Procurement Manager
Phone: (808) 594-1815
Fax: (808) 594-1865 fax
Email: **emmittf@oha.org**

1.5 PROCUREMENT TIMETABLE

This timetable represents OHA's best estimate of key dates relating to this RFP. While some dates are fixed, such as the deadline for submitting proposals, others may be adjusted at OHA's discretion. The contract start date may be subject to the issuance of a notice to proceed.

Event	Scheduled Date
Public announcement of RFP	November 10, 2010
Distribution of RFP	November 10, 2010 through December 16, 2010
Pre-Proposal Conference	December 2, 2010, 1:00 – 4:30 pm
Deadline for Receipt of Questions	December 10, 2010
OHA's Response to Questions	December 16, 2010
Proposal submission deadline	December 30, 2010, 4:00 pm
Proposal evaluations	January 3, 2011 through January 10, 2011
Contractor Selection (on/about)	January 14, 2011
Tentative Contract start date	February 15, 2011

1.6 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held on **December 2, 2010, 1:00 to 4:30 pm**, Hawaii Standard Time (HST), in the Library at the Office of Hawaii Affairs, 711 Kapi`olani Blvd, Suite 500, Honolulu, Hawai`i. The purpose of the conference is to review OHA's "Consulting services to identify possible income/revenue opportunities for Wao Kele O Puna" requirements; answer questions pertaining to the RFP; and, provide additional information that may assist in the preparation of proposals.

Conference proceedings will not be formally documented unless changes in the RFP are required. RFP changes will be implemented by issuing an ADDENDUM (to the RFP). ADDENDUMs shall be provided to all Offerors registered to receive the RFP.

Offerors interested in attending the conference should contact the Issuing Officer, not later than 4:00 pm, December 1, 2010 (HST). The conference shall be cancelled at the election of OHA, and Offerors accordingly informed, if no or little interest in conference participation is received.

1.7 SUBMISSION OF QUESTIONS

Offerors are encouraged to submit written questions pertaining to the RFP. Impromptu (un-written questions) are permitted and verbal answers will be provided during on site visits and other occasions, but are only intended as general direction and will not represent official agency position.

Question(s) must be submitted in writing to the Issuing Officer not later than the "closing date for receipt of questions", identified in paragraph 1.5, in order to generate an official answer. All written questions will receive an official written response from OHA and become addendum's to the RFP. The only official position of OHA is that which is stated in writing and issued in the RFP as addendum's thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

1.8 SOLICITATION REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the Issuing Officer prior to the proposals due date. This will allow issuance of any necessary amendments to the RFP. It will also assist in preventing the opening of proposals upon which award may not be made due to a defective solicitation package.

1.9 RFP AMENDMENTS

OHA reserves the right to amend the RFP any time prior to the ending date for the proposal evaluation period.

1.10 CANCELLATION OF RFP

The RFP may be canceled when it is determined to be in the best interests of OHA.

1.11 PROTESTS

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved individual/business knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to the proposal receipt date.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

Any and all protests shall be submitted in writing to the Head of the Purchasing Agency (HPA), as follows:

Mr. Clyde W. Nāmu'o
Head of the Purchasing Agency
Office of Hawaiian Affairs
711 Kapiolani Bld.
Honolulu, Hawaii 96813

1.12 GENERAL INFORMAITION

AUTHORITY: This RFP is issued under the provisions of §103D, Hawai`i Revised Statutes, and its related Hawai`i Administrative Rules. All prospective applicants are charged with presumptive knowledge of all requirements of these cited authorities. Submission of a proposal shall constitute affirmation of such knowledge on the part of the applicant.

BACKGROUND: The Office of Hawaiian Affairs (OHA) was established by the Hawai`i State Legislature in 1979 under Chapter 10 of the Hawai`i Revised Statutes. OHA's mission is "To mālama (protect) Hawai`i's people and environmental resources and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally.

Section 2
Project Specifications and Requirements

2.1 INTRODUCTION

2.1.1 *Overview*

Article XII of the Hawai'i State Constitution and Chapter 10 of the Hawai'i Revised Statutes mandates that OHA work to better the conditions of Native Hawaiians. OHA's Transitional Assistance Program works in partnership with community organizations and other local government agencies to improve the range, delivery, and quality programs for Native Hawaiian beneficiaries. OHA strives to enhance beneficiary access to resources, information, and services and awards project grants to support those agencies and organizations dedicated to serving Native Hawaiians.

The purpose of the RFP is to seek consultant services to present to OHA's Chief Executive Officer and Trustees the possible income/revenue generation opportunities at Wao Kele O Puna.

2.1.2 *Scope of Service*

A) Identify and recommend possible income/revenue opportunities at Wao Kele O Puna. Recommended income/revenue opportunities should take into account the following:

1. Opportunities should be sustainable, compatible with traditional and customary rights exercised by Hawaiians and able to support proposed activities without depleting and/or exploiting cultural/natural resources, negatively impacting the environment, and/or compromising cultural values.
2. Opportunities will comply with the following:
   a. County, State and Federal laws including Hawaii Revised Statutes (HRS) Chapter 183 related to Forest Reserves, current land use, and zoning;
   b. Findings of Fact and Conclusions of Law and Final Declaratory Judgment/Injunction issued on August 26, 2002 in *Pele Defense Fund vs. The Estate of James Campbell, Deceased et. al*, Civil No. 89-089; (Attachment B)
   c. U.S. Department of Agriculture Forest Legacy Federal Grant requirements and the Forest Legacy Program Implementation Guidelines dated June 30, 2003; (Attachment C)
   d. Section 11 of the Memorandum of Agreement between the Department of Land and Natural Resources, State of Hawaii and the Office of Hawaiian Affairs executed June 27, 2006; (Attachment D) and
   e. Any other restrictions deemed applicable to Wao Kele O Puna.
3. Opportunities should consider the following:

a. Volcanic, seismic, lava flow hazards and any other hazards applicable to Wao Kele O Puna;
b. Topography, terrain, and geography of Wao Kele O Puna; and
c. Consistency with OHA's Vision, Mission, 2010-2016 Strategic Plan, and Real Estate Vision, Mission and Strategy

B) Prioritize the recommended income/revenue generation opportunities.

C) Provide explanation/background information for each recommended opportunity.

D) Meet with OHA staff to review the recommended income/revenue generation opportunities and discuss the most viable opportunities. Meeting should proceed work in Step #E.

E) For the most viable opportunities, provide the following:
1. Feasibility Analysis
2. Industry and market analysis/assessment
3. Five (5) year budget projections of revenue and associated costs
4. Capital cost budget
5. Required infrastructure (i.e. staffing, equipment, technology, etc.)
6. Required permits, if needed

F) Provide three (3) hard copies and an electronic copy of a report prepared for OHA incorporating items #A - #E above due no later than May 16, 2011.

G) Present recommendations to OHA's Chief Executive Officer no later than June 16, 2011. Contractor should prepare a visual presentation (i.e. PowerPoint, etc.) for the recommendations and prepare a fact sheet on the recommendations.

H) Present recommendations to OHA Trustees no later than March 15, 2011, if needed. Contractor should prepare a visual presentation (i.e. PowerPoint, etc.) for the recommendations and prepare a fact sheet on the recommendations.

2.2 CONTRACT PERIOD

The term of contract will be for twelve (12) months, commencing on or about February 15, 2011. The contract will include an "option to extend" provision, at negotiated fees subject to the availability of funds. A Supplemental Agreement to extend the term as mutually agreed to by the CONTRACTOR and OHA shall be timely executed by both parties prior to the expirations of the contract period.

Section 3
Proposal Format and Content

3.1 INTRODUCTION

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the requirements described in this RFP.

3.2 PROPOSAL PREPARATION

Offerors shall prepare a written proposal in accordance with requirements of this SECTION. Proposals shall address and contain, at a minimum:

The technical category information identified in paragraph 3.7, below.

The cost category information identified in paragraph 3.8, below.

Proposals shall include all data and information specified/requested to qualify proposals for evaluation and consideration for award. Non-compliance may be deemed sufficient cause for disqualification of a proposal.

Prepare proposals in a three-ring binder, organized into distinctive sections, with tabs corresponding with the technical, cost and other categories, as appropriate. The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is **HIGHLY DISCOURAGED**. This procedure will facilitate proposal evaluations.

3.3 COSTS FOR PROPOSAL PREPARATION

Any and all costs incurred in the development of proposals, i.e. preparing and submitting, on-site visits, pre-proposal conference attendance, travel and lodging, etc. shall be the sole responsibility of Offeror.

3.4 DISQUALIFICATION OF PROPOSALS

OHA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP and which demonstrate an understanding of the scope of services. **Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice.** OHA reserves the right to ask for clarification of any item in the proposal.

An Offeror will be disqualified and the proposal automatically rejected for any one or more of the following reasons:

- Proof of collusion among Offerors, in which case all proposals involved in the collusive action will be rejected.
- The Offeror's lack of responsibility and cooperation as shown by past work or services.
- The proposal shows any noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.

3.5 SUBMISSION OF PROPOSALS

Each Offeror may submit only one (1) written proposal (which includes in part, a technical proposal and a cost proposal). Alternate proposals will not be accepted. The Issuing Officer must receive one (1) original, two (2) copies and one (1) Adobe pdf or Microsoft Word soft copy on compact disk of the proposal **no later than 4:00pm, HST, on the "Closing Date For Receipt of Proposals", identified in paragraph 1.4 of SECTION 1. Proposals received after this time/date shall be rejected.** The original shall be clearly marked "ORIGINAL" and copies shall be clearly marked "COPY".
Mail or deliver proposals to the following address:

Emmitt Ford, Jr.
Procurement Manager, RFP # OHA 10-02
Office of Hawaiian Affairs
711 Kapi`olani Blvd. Suite 500
Honolulu, Hawai`i 96813

The outside cover of the package containing the proposal should be noticeably marked, as follows:

Proposal Submitted in Response to: RFP # OHA 10-02

3.6 PUBLIC INSPECTION

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and Offeror's proposals shall be open to public inspection after the contracts are executed by all parties.

Offerors shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. OHA cannot guarantee that designated data will be kept confidential. The proposals are subject to disclosure rules set forth in Chapter 92F, Hawai`i Revised Statutes, as amended. The Offeror bears the burden of establishing that the designated data is exempted

from the disclosure requirements set forth in chapter 92F. Offerors may not designate the entire response, including price proposal as confidential.

All proposals and other material submitted by Offerors become the property of OHA and may be returned only at OHA's option.

3.7 TECHNICAL PROPOSAL

The technical proposal shall include the following four (4) categories:

1. SUMMARY
2. BACKGROUND, QUALIFICATIONS AND EXPERIENCE
3. PERSONNEL ORGANIZATION AND STAFFING
4. DRAFT/SAMPLE PROPOSED SUSTAINABLE INCOME/REVENUE OPPORTUNITIES REPORT

3.7.1 *Summary*

Clearly, concisely and briefly summarize and highlight the contents of the technical proposal in such a way to provide OHA with a broad understanding and the unique, most promising aspects of the proposal.

3.7.2 *Background, Qualifications and Experience*

Provide explicit details on Company's background, qualifications and experience relative to performing requirements set forth in the "Scope of Services", including but not limited to:

A. Background of the Company, i.e. services offered, size, resources, years in business, location, State of Hawai`i presence, State of incorporation, etc.

B. Brief description of Company's qualifications to perform "Scope of Services" requirements.

C. Brief description of three (3) past and/or present contracts similar to the "Scope of Services" requested demonstrating Company's qualifications, experience and performance. Include customer name, contact name and telephone number. If not available, provide contact name and telephone number of three (3) references that can discuss your Company's qualifications, experience and performance.

D. Identification of litigation currently impacting the Company, if any. State "NONE", if none.

3.7.3 *Personnel Organization and Staffing*

Provide explicit details on the Company's personnel organization and staffing relative to performing requirements set forth in the "Scope of Services", as follows:

A. The Company's managerial organizational chart and resumes of key positions.

B. Key personnel identified to perform services, including: name, years of experience, years with the Company, qualifications and verifiable references (with contact telephone numbers), if any.

C. Explain resources or personnel allocated to execute the requirements set forth in the scope of services, or that will implement the proposal.

D. Identify subcontractors, if any, Company will utilize to execute the requirements set forth in the scope of services.

3.7.4 *Draft/Sample Proposed Sustainable Income Opportunities Report*

Provide sample/draft report with detailed explanation/background information for recommended sustainable income/revenue opportunity.

3.8 COST PROPOSAL

The cost proposal shall include the following two (2) categories:

1. SUMMARY
2. SUMMARY OFFER

3.8.1 *Summary*

Clearly, concisely and briefly summarize and highlight the cost proposal, in such a way as to provide OHA with a broad understanding and the unique, most promising aspects of the proposal.

3.8.2 *Summary Offer*

Provide a detailed, line-item list (including, at a minimum: description, quantity, unit cost, total cost), of any and all costs, with a summary total representing the dollar amount offered **("SUMMARY OFFER")** to perform "Scope of Service" requirements of this RFP.

All worksheets and supportive documentation, in determining the **SUMMARY OFFER**, shall be provided with the proposal to verify validity of computations and determine if costs are "fair & reasonable". A further breakdown of costs and/or costs related information may be requested during proposal review and evaluation.

The **"SUMMARY OFFER"** shall represent the total amount offered; and, if proposal is accepted, the **"<u>not to exceed</u>"** maximum dollar amount of the contract; excluding CONTRACTOR "optional services" costs of paragraph 3.9, below, and/or revised costs resulting from subsequent cost changes, negotiations, etc, if any.

3.9 OFFEROR OPTIONAL SERVICES

Offeror optional services are defined as services and/or goods proposed (by Offerors) that are not included in the "Scope of Services" of the RFP and would be considered enhancements, thereof. Costs for Offeror optional services, selected by OHA, will be added to the total amount of the Agreement (Contract) or be included in the Agreement as an optional service item to be exercised by OHA, if and when elected.

Provide brief description and detailed costs for optional services proposed. All worksheets and supportive documentation in determining costs shall be provided with the proposal to enable OHA evaluators to verify validity of computations and determine if costs are "fair & reasonable".

3.10 NON APPLICABLE PROPOSAL REQUIREMENT

If any proposal requirement, as described in this SECTION, is not applicable to the Offeror and therefore will not or cannot be provided, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not applicable. If none, state NONE. OHA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this SECTION.

3.11 NON ACCEPTANCE OF ANY RFP REQUIREMENT

If any RFP requirement, as describe in this RFP, is not acceptable to the Offeror, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not acceptable and provide a recommended revision, if applicable. If none, state NONE. OHA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP.

Section 4
Evaluation Criteria and Contractor Selection

4.1 INTRODUCTION

The following conditions apply to this RFP:

- Only those proposals that substantially meet all of the terms, conditions, and requirements specified in this RFP shall be considered. All other proposals shall be considered non-responsive and shall not be included in the evaluation and selection process.

- Inclusion of additional terms, conditions, and/or agreements with the proposal shall result in rejection of the proposal.
- Proposals must be valid and irrevocable for 60 days after the due date and time to allow OHA time for adequate evaluations.
- OHA shall award the contract to the firm whose proposal is most advantageous to OHA, based on the evaluation criteria listed below. Cost shall not be the major factor in making this determination.
- OHA is committed to making a fair and impartial evaluation of all proposals received.

4.2 PROPOSAL EVALUATION COMMITTEE

An evaluation committee shall be designated by OHA to perform all evaluation requirements. The committee will be composed of individuals with experience in, knowledge of, and program responsibility for the requirements identified in the RFP. OHA reserves the right to request information (from Offerors) to clarify the Offeror's proposal.

4.3 EVALUATION PHASES

Evaluation will be conducted in the following phases:

Phase 1.....Evaluation of Mandatory Requirements

Phase 2.....Technical Proposal Evaluation

Phase 3.....Cost Proposal Evaluation

Phase 4.....Recommendation for Contract Award

4.3.1 *Phase 1 – Evaluation of Mandatory Requirements*

The evaluation of the mandatory requirements, as listed below, shall be based upon a "pass/no pass" basis. The purpose of this phase is to determine whether an Offeror's proposal is sufficiently responsible and responsive to RFP requirements to permit a complete evaluation, i.e. responsible in terms of "Does the Offeror have the capability to perform fully the "Service and Specifications" requirements; and responsive in terms of "Were proposal documents, as identified below, received and contain the required information"? Failure to meet any mandatory requirement ("no pass") will be grounds for deeming the proposal non-responsible, non-responsive or both and disqualification thereof.

Mandatory requirements are as follows:

A. Proposal Cover Letter

B. Technical Proposal

1. Summary
2. Background, Qualifications and Experience
3. Personnel Organization and Staffing
4. Statewide Service Delivery System

C. Cost Proposal

1. Summary
2. Summary Offer

4.3.2 *Phase 2 – Technical Proposal Evaluation*

Evaluation of Offeror's technical proposal shall be conducted using the technical proposal categories and the value weight percentages identified in paragraph 4.4; and, the evaluation scoring system identified in paragraph 4.5.

4.3.3 *Phase 3 – Cost Proposal Evaluation*

Evaluation of the cost proposal shall be conducted using the cost proposal category and the value weight percentages identified in paragraph 4.4; and, the evaluation scoring system identified in paragraph 4.5.

4.3.4 *Phase 4 – Recommendation for Contract Award*

The Evaluation Committee shall prepare a report summarizing proposal evaluation findings/rankings and provide recommendation for award of contract to the HPA.

4.4 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

Mandatory Requirements – Qualify / Does Not Qualify

	Value Weight
Technical Proposal	70%
Background, Qualifications and Experience	.....20%
Personnel Organization and Staffing	.....10%
Draft sustainable income/revenue opportunity report.	.....40%
Cost Proposal	30%
TOTAL:	**100%**

4.5 EVALUATION SCORING SYSTEM

The maximum number of points available for scoring is one thousand (1,000) per evaluator. The proposal receiving the highest number of points is considered statistically the best proposal and most advantageous to OHA; and, will be recommended for award of contract, unless otherwise determined and justified by the evaluation committee.

The evaluation categories are assigned a value weight percentage, as determined by OHA, totaling 100%. Each category will be rated between one (1) and ten (10), with ten being the highest (the best rating) by each member of the evaluation committee. The Offeror's total score will be determined by: a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and, c) totaling the score of all evaluators.

Note: In determining the total score, the OFFERORS cost proposal with the lowest costs will receive the highest available rating allocated to costs. Each proposal that has a higher cost than the lowest will have a lower rating for costs. The points allocated to higher-priced proposals will be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.

Section 5
Special Provisions

5.1 COMPLIANCE DOCUMENTS

The following compliance documents will be required from Offeror prior to entering into a contract with OHA:

A. Tax clearances from the State Department of Taxation and Internal Revenue Service; and

B. DLIR Form 27 from the State Department of Labor and Industrial Relations; and

C. A Certificate of Good Standing from the State Department of Commerce and Consumer Affairs; or

   A Certificate of Vendor Compliance indicating compliance with all three requirements may be obtained from the Hawaii Compliance Express (HCE) through the State Department of Accounting and General Services.

5.2 CONFIDENTIAL INFORMATION

Offeror shall designate in writing those portions of the proposal that contain trade secrets or other proprietary data that is to remain confidential, subject to §3-122-58, Hawai`i Administrative Rules. The material designated as confidential shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

5.3 OPENING OF PROPOSALS

Upon receipt by OHA at the designated location, proposals, modifications to proposals, and withdrawals of proposals will be date stamped and held unexamined in a secure place until the submittal deadline.

Procurement files, except for materials kept confidential under applicable laws, will be open to public inspection after a contract has been awarded and executed.

5.4 ADDITIONAL MATERIALS AND DOCUMENTATION

Upon OHA's request, each Offeror shall submit any additional materials and documentation reasonably required by OHA for its evaluation of the proposals.

5.5 RFP AMENDMENTS

OHA reserves the right to amend this RFP at any time prior to the closing date for the final revised proposals.

5.6 FINAL REVISED PROPOSALS

If requested, final revised proposals shall be submitted in the manner and by the deadline specified by OHA. If a final revised proposal is not submitted, the previous submittal shall be construed as the Offeror's best and final proposal. **The Offeror shall submit <u>only</u> the section(s) of the proposal that are amended.** After final revised proposals are received, final evaluations will be conducted for an award.

5.7 CANCELLATION OF RFP

This RFP may be cancelled and any or all proposals may be rejected in whole or in part when it is determined to be in the best interests of OHA.

5.8 COSTS FOR PROPOSAL PREPARATION

Any costs incurred by Offerors in preparing or submitting proposals are the Offerors' sole responsibility.

5.9 REJECTION OF PROPOSALS

OHA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems involved and comply with the specifications. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP may be rejected without further notice.

5.10 NOTICE OF AWARD

Any agreement arising out of this solicitation is subject to approval of OHA corporate counsel as to form, and to all further approvals required by statute, regulation, rule, order, or other directive.

5.11 CONDITIONS OF CONTRACT

Attachment A to this RFP is a specimen OHA contract. The agreement with the contractor selected for this project can be expected to contain similar language and may be tailored to the project as appropriate.

ATTACHMENT A
SPECIMEN OHA CONTRACT

OFFICE OF HAWAIIAN AFFAIRS

CONTRACT NUMBER _____

CONTRACT BETWEEN

OFFICE OF HAWAIIAN AFFAIRS

AND

(NAME OF CONTRACTOR)

AGREEMENT

THIS AGREEMENT, made and entered into as of this _____day of _____, 2010 by and between the OFFICE OF HAWAIIAN AFFAIRS, a body corporate existing under the Constitution and laws of the State of Hawai'i, by its Chief Executive Officer, Clyde W. Nāmu'o, and its Chief Operating Officer, Stanton K. Enomoto, acting by and on behalf of the Board of Trustees, whose principal place of business and mailing address is 711 Kapi'olani Boulevard, Suite 500, Honolulu, Hawai'i 96813, hereinafter referred to as "OHA", and _____ _____, a Hawai`i corporation, by its _____, _____, whose principal place of business and mailing address is _____ _____ (Federal I.D. No. _____) hereinafter referred to as "CONTRACTOR".

In this Agreement, the party who is contracting to receive services is "OHA and the party who will be providing the services are the "CONTRACTOR."

WITNESSETH :

WHEREAS, one of the purposes for which OHA has been established is to better the conditions of Hawaiians as defined in Section 10-2, Hawai'i Revised Statutes (HRS); and

WHEREAS, OHA was established to better the conditions of native Hawaiians and Hawaiians as defined in HRS sections 10-2, 10-4(4), 10-4(6) and 10-4(8), and other applicable law(s), as amended; and

WHEREAS, the expenditure of funds as proposed in this Agreement are intended for the betterment of conditions of native Hawaiians and Hawaiians as set forth in section 10-3(1) and (2), HRS, and is consistent with the purpose for which these funds were appropriated; and

WHEREAS, *(BRIEF DESCRIPTION OF THE P URPOSE OF THE CONTRACT)*; and

WHEREAS, the CONTRACTOR represents that it has the required qualifications, capacity, and resources to perform the terms and conditions agreed to under this AGREEMENT.

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION ONE- SCOPE OF SERVICES

The CONTRACTOR agrees to satisfactorily provide the services hereinafter set forth which includes but may not be necessarily limited to:

(DETAILED DESCRIPTION OF SERVICES TO BE PERFORMED)

SECTION TWO -TIME AND MANNER OF PERFORMANCE

The CONTRACTOR shall perform the services required under this Agreement from ____ _____, 2010 through and including _____, 2011, unless this Agreement is sooner terminated as provided hereafter in this Agreement. The manner in which the services are to be performed and the specific hours to be worked by the CONTRACTOR shall be determined by the CONTRACTOR, limited, however, to the maximum amount payable as specified in this Agreement.

SECTION THREE - COMPENSATION AND METHOD OF PAYMENT

OHA agrees to compensate CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed, _____ AND __/100 DOLLARS ($_____) inclusive of all actual reasonable ordinary necessary costs and expenses, including general excise tax currently at the rate of 4.712%, for services satisfactorily rendered under this Agreement.

(DETAILED DESCRIPTION OF HOW AND WHEN PAYMENTS ARE TO BE MADE)

All costs and expenses shall be actual reasonable ordinary necessary costs and/or expenses incurred in conjunction with the services provided under Section One of this Agreement and shall be approved by the Coordinator. The Coordinator's written approval shall also be required prior to CONTRACTOR's incurring any exceptional costs and/or expenses.

Should inter-island or out-of state travel be required, the CONTRACTOR shall obtain advance written approval from the Coordinator for such travel. Travel shall be by the most economical means consistent with time available and the urgency of the trip. Travel accommodations (airfare, subsistence and lodging) shall be reasonable considering all relevant circumstances. The CONTRACTOR shall be entitled to reimbursement for air fare and stipend for meals and lodging at a rate not to exceed the current per diem rates afforded State employees for similar type travel and shall be uniform and equitable for all travelers in all cases. Subject to the approval of the Coordinator, other necessary reasonable expenses which meet certain stipulated conditions and are supported by receipts issued in the normal course of business may be allowed in addition to airfare and stipend. The CONTRACTOR shall submit a written reimbursement request, certified by the CONTRACTOR to be the actual travel costs and expenses incurred in conjunction with the scope of services herein, to the Coordinator for Coordinator's review and approval. Each reimbursement request shall be accompanied by original receipts/invoices evidencing the actual expenditures incurred for which reimbursement is being claimed. Photocopies or faxed copies of receipts or invoices may be acceptable in exceptional circumstances when properly justified in writing. Credit card receipts are unacceptable for purposes of reimbursement herein.

Fees shall be payable upon presentment of invoices specifying to the satisfaction of OHA's Coordinator, who is identified in Section Four of this Agreement, that the services rendered have been satisfactorily performed in conformance with this Agreement. The invoices

shall include a detailed breakdown of CONTRACTOR's time charges attributable to the particular billing period and shall be accompanied by a verbal and/or written activity report as required by OHA identifying the type of work activities, tasks, and/or work product completed. Receipts evidencing actual costs and expenditures shall accompany monthly invoices whenever possible. Expenditure details and related receipts for any travel shall be for actual travel expenses incurred and shall also accompany monthly invoices presented for payment.

All payments shall be made in accordance with and subject to Chapter 40, HRS, which specifies the accounting procedures and controls applicable to payments out of the Treasury of the State of Hawai'i. Final payment in final settlement of this Agreement shall be subject to §103-53, HRS, which requires a tax clearance from the Director of Taxation, State of Hawai'i, stating that all delinquent taxes, if any levied or accrued under state statutes against the CONTRACTOR has been paid.

Upon termination of this Agreement, payments under this section shall cease, provided however, that CONTRACTOR shall be entitled to payments for work performed prior to the date of termination, provided hereinafter, and for which CONTRACTOR has not yet been paid.

SECTION FOUR - COORDINATION AND REPORTS

The work performed under this Agreement shall be coordinated with the *(Program)* Director or Designee, hereinafter referred to as "Coordinator", who will act as the contract monitor and principal liaison between the CONTRACTOR and OHA and who will assist in resolving policy questions, expediting decisions and the review of the work performed.

It shall be the responsibility of the CONTRACTOR to maintain close and frequent communication with the Coordinator at all stages of the work required under this Agreement. The CONTRACTOR shall inform the Coordinator of all scheduled contacts made by

CONTRACTOR with public agencies or individuals on matters relating to work performed under this Agreement.

In addition to the reports set forth in Section One of this Agreement, CONTRACTOR shall submit to the Coordinator, upon request, written progress reports on the performance of services, expenditure reports, and/or any other information required by Coordinator. The CONTRACTOR shall submit these reports in the appropriate formats and within the deadlines specified by the Coordinator.

The CONTRACTOR may be requested to discuss any work or reports with OHA's Board of Trustees or Chief Executive Officer.

SECTION FIVE - RECORDS MAINTENANCE, RETENTION, AND ACCESS

The CONTRACTOR shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the CONTRACTOR's performance of services under this Agreement. OHA, the comptroller of the State of Hawai'i, and any of its authorized representatives, the committees (and their staff) of the Legislature of the State of Hawai'i , and the Legislative Auditor of the State of Hawai'i shall have the right of access to any book, document, paper, file or other record of the CONTRACTOR (and of any of its subcontractors) that is related to the performance of services under this Agreement in order to conduct an audit or other examination or to make excerpts and transcripts for the purposes of monitoring and evaluating the CONTRACTOR's performance of services and the CONTRACTOR's program, management and fiscal practices to assure the proper and effective expenditure of funds under this Agreement.

The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The CONTRACTOR shall retain all records related to the CONTRACTOR's performance of services under this Agreement at least THREE (3) years after the date of submission of the CONTRACTOR's final expenditure report, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the THREE (3) year period, the CONTRACTOR shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year retention period, whichever occurs later.

SECTION SIX - RESPONSIBILITY FOR ACCURACY, COMPLETENESS AND ADEQUACY

The CONTRACTOR shall be responsible and accountable for accuracy, completeness, clarity, and adequacy of the work performed, including work performed by agents and employees. The CONTRACTOR agrees to perform the work in a professional manner with a professional attitude that shall involve a personal desire to place the Project's interest above other considerations and to accept the professional responsibility for the services to be rendered.

SECTION SEVEN - INDEPENDENT CONTRACTOR

In the performance of the services required under this Agreement, CONTRACTOR shall be an "independent contractor" with the authority to control and direct the performance and details of the work and services required under this Agreement; however, OHA shall have a general right to inspect the work in progress to determine whether, in OHA's opinion, the services are being performed by the CONTRACTOR in accordance with the provisions of this Agreement The CONTRACTOR shall insure that all person(s) hired or used by the CONTRACTOR as agents and employees are qualified to engage in the activity and services in which they participate. The CONTRACTOR's agents and employees shall also be bound by the

provisions of this AGREEMENT. At the request of the OHA, CONTRACTOR shall provide adequate evidence that such persons are CONTRACTOR's agents or employees.

The CONTRACTOR shall insure that all applicable licensing and operating requirements of the State, Federal and County governments and all applicable accreditation and other standards of quality generally accepted in the field of the CONTRACTOR's business are completed and satisfactorily met. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability for any of its agents and employees, and to third parties for all loss, cost, damage, or injury caused, either directly or indirectly, by CONTRACTOR or CONTRACTOR's agents and employees in the course of their employment Any work under this Agreement shall not be construed as employment with OHA and shall not entitle CONTRACTOR or CONTRACTOR's agents and employees to vacation, sick leave, retirement, or other benefits afforded OHA employees. The CONTRACTOR shall be responsible for obtaining and maintaining a general excise tax license and other required licenses related to the operations of CONTRACTOR's business and shall be responsible for the payment of applicable income, social security, any other federal, state or county taxes and fees, as appropriate.

SECTION EIGHT - SUBCONTRACTS AND ASSIGNMENTS

The CONTRACTOR may not subcontract, assign, or transfer any right, title, or interest in whole or in part any services to be performed under this Agreement without prior written consent and approval of OHA. OHA may condition any consent and approval upon such terms and provisions that OHA may deem necessary. Furthermore, no assignment of claims for money due or to become due to the CONTRACTOR under this Agreement shall be effective unless such assignment is first approved by OHA.

SECTION NINE – INDEMNIFICATION & INJURIES

The CONTRACTOR shall defend, indemnify and hold OHA, its Trustees, employees, or agents harmless, from and against any and all actions, claims, suits, damages and expenses, including attorney fees, costs and judgments arising, either directly or indirectly, out of or resulting from the errors, omissions or acts of CONTRACTOR or CONTRACTOR's officers, employees, agents or subcontractors occurring during or in connection with the performance of CONTRACTOR's services under this Agreement.

The CONTRACTOR waives any rights to recovery from OHA for any injuries that CONTRACTOR or CONTRACTOR's employees or agents may sustain while performing services under this Agreement and that are a result of the negligence of CONTRACTOR or CONTRACTOR's employees or agents.

SECTION TEN - INSURANCE

A. INSURANCE REQUIREMENT: At all times during the Term of this Agreement, CONTRACTOR shall obtain and maintain in full force and effect during the Term, any and all insurance to cover CONTRACTOR's operations under this Agreement that may be required under all applicable federal, state, and city laws and ordinances including, but not limited to, worker's compensation coverage, commercial general liability insurance, and automobile liability insurance coverage. Prior to commencing work pursuant to this Agreement, CONTRACTOR shall provide evidence that CONTRACTOR has in full force and effect the following policies:

1. Commercial Liability Insurance: CONTRACTOR shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than $1,000,000.00 per occurrence and $ 2,000,000.00 general aggregate. OHA shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent),

and under the commercial umbrella, if any. Policy shall be an "Occurrence" form of policy, unless otherwise specifically approved by OHA.

2. Automobile Liability Insurance: Auto Liability Policy shall have a combined Single Limit of $1,000,000.00 for each accident or equivalent and shall cover owned, hired and non-owned vehicles.

3. Workmen's Compensation Coverage: Policy shall include coverage required by State of Hawai`i and include Part B coverage as follows: Employers Liability with limits of $100,000.00 for each accident, $500,000.00 disease policy limit, and $100,000.00 disease policy limit per employee.

B. OTHER TERMS. All policies of insurance described above shall:

1. Name the State of Hawai'i, OHA and its Trustees, OHA's employees, representatives and agents as Additional Insureds, by endorsement.

2. Provide that the insurance is Primary with respect to all insureds for claims arising out of CONTRACTOR's negligent acts and/or omissions or misconduct, and that any insurance (or self-insurance) carried by OHA or the State of Hawai'i shall be excess and non-contributing.

3. Be provided by insurers authorized to do business in the State of Hawai'i, and with a current Best's rating of not less than A-VII, or otherwise as approved by OHA.

C. EVIDENCE OF INSURANCE: CONTRACTOR shall provide to OHA and maintain current certificates of insurance, prepared by a duly authorized agent, and copies of the policies, evidencing the insurance in effect at all times during the Term of this Agreement. OHA shall be listed as the Certificate Holder on all such certificates.

D. NOTICE OF CANCELLATION: CONTRACTOR, through its insurance broker, will provide OHA with 30 days written notice prior to cancellation, termination, lapse, non-renewal or material change to the insurance policy

SECTION ELEVEN – OTHER CONDITIONS OF USE OF FUNDS

The CONTRACTOR shall not use any funds involved in this Agreement for purposes of entertainment or perquisites and shall comply with any and all conditions applicable to the funds to be paid under this Agreement, including those conditions made applicable by provisions of appropriation acts of the Legislature or by administrative rules adopted pursuant to law.

SECTION TWELVE – CONFIDENTIALITY OF MATERIAL

Any information, data, report, record or material given to or prepared or assembled by CONTRACTOR under this Agreement shall be confidential and shall not be made available to any individual or organization by CONTRACTOR without prior written approval of OHA. Nor shall any information data, report, record or material given to or prepared or assembled by CONTRACTOR be used by the CONTRACTOR for personal gain and/or any other purposes, except those purposes explicitly stated in this Agreement. A violation of this Section shall be a material violation of this Agreement.

If it appears that CONTRACTOR has disclosed (or has threatened to disclose) information and or has used such information for purposes in violation of this Agreement, OHA shall be entitled to an injunction to restrain CONTRACTOR from disclosing and/or using, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. OHA shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

The confidentiality provisions of this Agreement shall remain in full force and effect after termination of this Agreement.

SECTION THIRTEEN – CONFLICT OF INTEREST & DISCLOSURE

The CONTRACTOR represents that CONTRACTOR presently has no interest and/or has no interest in another company, partnership, organization, entity, etc., that would conflict in any manner or degree with the performance of the services under this Agreement. CONTRACTOR promises that he/she shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services under this Agreement.

The CONTRACTOR is required to disclose any outside activities or interests, including ownership or participation in any activity that conflict or may conflict with the best interest of OHA. Prompt disclosure is required under this Section if the activity or interest is related, directly or indirectly, to any activity that CONTRACTOR may be involved with on behalf of OHA.

The conflict of interest/disclosure provisions of this Agreement shall remain in full force and effect for the entire duration of this Agreement and/or extensions under this Agreement.

SECTION FOURTEEN – RETURN OF RECORDS/PROPERTY OF OHA

Upon expiration or termination of this Agreement, as provided hereinafter, the CONTRACTOR shall deliver and/or surrender all finished or unfinished documents, reports, summaries, lists, charts, graphs, maps, records, notes, data, memorandum, photographs, photographic negatives, videos, or other materials prepared by the CONTRACTOR and any discoveries, inventions or developments produced in whole or in part under this Agreement (which shall become OHA's property) together with all information, data, reports, records, maps, and other materials provided to the CONTRACTOR by OHA, to OHA on or before the

expiration date or date of sooner termination. The CONTRACTOR shall not be required, however, to deliver or surrender any licenses to proprietary software used in CONTRACTOR's normal course of business.

SECTION FIFTEEN – NOTICES

All notices required or permitted under this Agreement shall be in writing and will be deemed delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

OHA:

OFFICE OF HAWAIIAN AFFAIRS
711 Kapi'olani Boulevard, Suite 500
Honolulu, Hawai'i 96813
Attn: Clyde W. Nāmu'o,
Chief Executive Officer

CONTRACTOR:

Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

SECTION SIXTEEN - DISPUTES

NEGOTIATION. In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the breach, termination, or validity thereof, OHA and CONTRACTOR agree to use its best efforts to settle such dispute, claim, question, or disagreement. To this effect, upon notice of the dispute, claim, question or disagreement, OHA and CONTRACTOR agree to consult and negotiate with each other in good faith to reach a just and mutually satisfactory solution.

MEDIATION. If OHA and CONTRACTOR do not reach such a negotiated solution within TWENTY-ONE (21) days of notice of the dispute, claim, question or disagreement, OHA and CONTRACTOR agree next to try in good faith to settle the dispute by mediation before resorting to arbitration. The mediation shall be administered by mediator mutually agreed upon

by OHA and CONTRACTOR in accordance with the Dispute Prevention and Resolution, Inc., Mediation Rules and Guidelines.

ARBITRATION. Thereafter, any unresolved dispute, claim, question or disagreement arising out of or relating to this Agreement (including whether such dispute, claim, question or disagreement is arbitral), or breach, termination or validity thereof, shall be settled by binding arbitration before one arbitrator, and judgment upon the Award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be administered and conducted in accordance with accordance with the Dispute Prevention and Resolution, Inc., Mediation Rules and Guidelines in effect at the time a request for arbitration of the dispute is made. A decision and award of the arbitration made under the said rules shall be exclusive, final, and binding upon all parties, their agents, employees, successors, and assigns. The costs and expenses of the arbitration shall be borne equally by the parties. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of services under this Agreement. The selection of the arbitrator shall be mutually agreed to by OHA and the CONTRACTOR. OHA and CONTRACTOR understand that by choosing arbitration for its dispute, OHA and CONTRACTOR are waiving its right to trial by jury.

The negotiation, mediation, or arbitration shall be conducted in Honolulu, Hawai'i.

SECTION SEVENTEEN – TERMINATION OF AGREEMENT

If, for cause, the CONTRACTOR fails to satisfactorily fulfill in a timely and proper manner the CONTRACTOR's obligation under this Agreement or breaches any promises, terms or conditions of this Agreement and having been given reasonable notice of an opportunity to cure any such default and not having taken satisfactory corrective action with the time specified by OHA, OHA shall have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination at least SEVEN (7) calendar days before the effective date

of such termination. The particular acts which shall constitute cause and justify termination include poor performance, disloyalty or self-dealing, disclosure of confidential information, or other acts of like nature.

Furthermore, either party may terminate this Agreement without statement of cause at any time by giving written notice to the other party of such termination at least THIRTY (30) calendar days before the effective date of such termination.

In the final settlement of this Agreement, OHA shall determine the amount of unexpended and unobligated funds to be refunded to OHA by the CONTRACTOR. If the termination is for cause, any other provision to the contrary notwithstanding, the CONTRACTOR shall not be relieved of liability to OHA for damages sustained because of any breach of this Agreement by the CONTRACTOR.

SECTION EIGHTEEN - WAIVER OF VIOLATIONS

It is expressly understood and agreed that no waiver granted by OHA on account of any violation of any promise, term, or condition of this Agreement shall constitute or be construed in any manner as a waiver of the promise, term, or condition or of the right to enforce the same as to any other or further violation.

SECTION NINETEEN – SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

SECTION TWENTY – WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce, or the granting of a waiver of, any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

SECTION TWENTY-ONE – AMENDMENT

This Agreement may be modified, amended or extended, if the amendment is made in writing and is signed by both parties. This contract may be extended on condition of satisfactory performance by the CONTRACTOR as determined by the COORDINATOR and shall be contingent upon the availability of funds for compensation payable for services rendered and cost and expenses incurred beyond the initial term of this Agreement.

SECTION TWENTY-TWO – ENTIRE AGREEMENT

This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral Agreements between parties.

SECTION TWENTY-THREE – APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Hawai'i.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

OFFICE OF HAWAIIAN AFFAIRS

Date: _____, 2010

By _____
CLYDE W. NĀMU'O
Its Chief Executive Officer

Date: _____, 2010

By _____
STANTON K. ENOMOTO
Its Chief Operating Officer

"OHA"

(CONTRACTOR)

Date: _____ 2010

By _____

Its

"CONTRACTOR"

APPROVED AS TO CONTENT:

_____
(PROGRAM DIRECTOR)
Community Relations Director

Date: _____, 2010

APPROVED AS TO FORM:

_____
ERNEST M. KIMOTO
Corporate Counsel

Date: _____, 2010

STATE OF HAWAI'I)
) ss.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2010, before me personally appeared CLYDE W. NĀMU'O, to me known, who being by me duly sworn, did say that he is the Chief Executive Officer of the OFFICE OF HAWAIIAN AFFAIRS, a body corporate and instrumentality of the State, and that in the absence of a seal that said instrument was signed in behalf of said corporation by authority of its Board of Trustees, and the said Chief Executive Officer acknowledged said instrument to be the free act and deed of said body corporate and instrumentality of the State.

_____
Notary Public, State of Hawai'i
Print Name: _____

My commission expires:_____

STATE OF HAWAI'I)
) ss.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2010, before me personally appeared STANTON K. ENOMOTO, to me known, who being by me duly sworn, did say that he is the Chief Operating Officer of the OFFICE OF HAWAIIAN AFFAIRS, a body corporate and said instrumentality of the State, that in the absence of a seal said instrument was signed in behalf of said corporation by authority of its Board of Trustees, and the said Chief Operating Officer acknowledged said instrument to be the free act and deed of said body corporate and instrumentality of the State.

_____
Notary Public, State of Hawai'i
Print Name: _____

My commission expires:_____

STATE OF HAWAI'I)
) ss.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2010 before me personally appeared _____, to me known, who, being by me duly sworn, did say that he is the _____ of _____., a Hawai`i corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

_____
Notary Public, State of Hawai'i
Print Name: _____

My commission expires_____

ATTACHMENT B

Pele Defense Fund v. The Estate of James Campbell

FILED

ALAN MURAKAMI 2285
NATIVE HAWAIIAN LEGAL CORPORATION
1164 Bishop Street, Suite 1205
Honolulu, Hawaii 96813
Telephone: (808) 521-2302

JAMES M. DOMBROSKI 3622
LAW OFFICES OF JAMES M. DOMBROSKI
P.O. Box 751027
Petaluma, California 94975
Telephone: (707) 762-7807

STEVEN C. MOORE Pro Hac Vice
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760
Attorneys for Plaintiff
PELE DEFENSE FUND

2002 AUG 26 AM 10: 12

C. OKAWA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND, Plaintiff, vs. THE ESTATE OF JAMES CAMPBELL, DECEASED; W.H. MCVAY AND P.R. CASSIDAY, in their fiduciary capacity as Trustees under the Will and the Estate of James Campbell, Defendants.	CIVIL NO. 89-089 (Hilo) (Declaratory Judgment/Injunction) FINAL JUDGMENT; EXHIBITS "A" AND "B" Trial Date: August 2, 1994 Judge: Hon. Riki May Amano

FINAL JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law entered herein on AUG 26 2002, this court hereby enters JUDGMENT finally resolving all claims as to all

I hereby certify that this is a full, true and correct copy of the original on file in this office.

Clerk, Third Circuit Court, State of Hawaii

parties in favor of Plaintiff Pele Defense Fund (hereinafter PDF) and against the Estate of James Campbell as follows:

1. The Estate of James Campbell, its Trustees and each of their respective agents, employees, officers, heirs, personal representatives, successors, assigns, and beneficiaries, including successors in interest to 27,785.89 acres of land situate in the Puna District of the County of Hawai'i, State of Hawai'i (hereafter, the "land"), as described in the attached Exhibit "A", are permanently enjoined from excluding the following persons from entering the undeveloped portions of the land and using the developed portion for reasonable access to the undeveloped portions, (the developed areas are defined on Exhibit B attached hereto), to perform customarily and traditionally exercised subsistence and cultural practices:

(a) Hawaiian subsistence or cultural practitioners who are descendants of the inhabitants of the Hawaiian Islands prior to 1778;

(b) Person or persons accompanying Hawaiian subsistence or cultural practitioners described in (a); or

(c) Persons related by blood, marriage or adoption to Hawaiian subsistence or cultural practitioners described in (a).

2. For purposes of liability, all persons listed above are not invitees of the owner of the land.

3. Notwithstanding that this judgment includes a "permanent" injunction, the Estate of James Campbell and successor owners of the land, are not barred from and may seek to develop the undeveloped portions of the land consistent with applicable law; and PDF may oppose further development by lawful means.

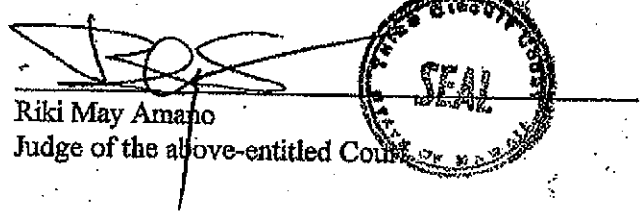
4. The owner of the land shall give PDF notice of any and all proposed future development prior to application for any state or county permits, or the initiation of any development-related activity that does not require such permits. On January 1 of each calendar year, PDF shall inform the owner of the land of the name(s) and address of its designated officer(s) for purposes of this notice.

5. PDF shall submit a monitoring plan consistent with this Judgment to the owner of the land within six (6) months after entry of this Judgment. If the parties are unable to agree on the terms of the monitoring plan, either one or both parties may request Court instructions.

6. The Court shall retain jurisdiction to enforce this Judgment and the permanent injunction. If enforcement is necessary, any party in violation of the terms herein may be subject to contempt of court and sanctions, including but not limited to the payment of costs and reasonable attorneys' fees.

7. This judgment constitutes the final resolution of the all claims against all parties. There are no other outstanding claims or defenses which have been left unresolved.

DATED: Hilo, Hawaii, AUG 30, 2002.



Riki May Amano
Judge of the above-entitled Court

APPROVED AS TO FORM:

Gary G. Grimmer
Robert E. Strand
Attorneys for Defendant Trustees of the Campbell Estate
1470125.2

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 20,315

December 13, 1985

PORTIONS OF GOVERNMENT LANDS OF
MAKIU, KAORE, KAIMU, KEHENA, KAPAAKU AND KAMAILI

PARCEL A

Puna, Island of Hawaii, Hawaii

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8228.41 feet West, thence running by azimuths measured clockwise from True South:-

1.	240° 05' 12"	24,288.19 feet	along Land Court Application 1053;
2.	343° 23' 30"	1348.57 feet	along the remainder of Government Lands;
3.	313° 00'	1221.60 feet	along the remainder of Government Lands;
4.	330° 16'	4682.10 feet	along the remainder of Government Lands;
5.	262° 03'	1960.70 feet	along the remainder of Government Lands;
6.	290° 02'	627.40 feet	along the remainder of Government Lands;
7.	314° 28'	4581.80 feet	along the remainder of Government Lands;
8.	314° 47'	744.40 feet	along the remainder of Government Lands;
9.	314° 12'	735.30 feet	along the remainder of Government Lands;
10.	315° 31'	1825.53 feet	along the remainder of Government Lands;
11.	40° 41'	13.81 feet	along the north side of 20-Foot Road;

EXHIBIT "A"

December 13, 1985

12. 338° 15' 14.99 feet along the west side of 20-Foot Road;

13. 60° 05' 12" 25,840.22 feet along Parcel B of Government Lands;

14. 140° 23' 16,220.18 feet along Parcel B of Government Lands to the point of beginning and containing an AREA OF 9,012 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

pt

Compiled from CSF 4777,
CSF 18,637 and Govt.
Survey Records.

60185R43

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 20,316

December 13, 1985

PORTIONS OF GOVERNMENT LANDS OF
MAKIU, KAOHE, KAIMU, KEHENA, KAPAAKU AND KAHAILI

PARCEL B

Puna, Island of Hawaii, Hawaii

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet South and 22,096.90 feet West, thence running by azimuths measured clockwise from True South:-

1.	240° 05' 12"	16,000.00 feet	along Land Court Application 1053;
2.	320° 23'	16,220.18 feet	along Parcel A of Government Lands;
3.	240° 05' 12"	25,840.22 feet	along Parcel A of Government Lands;
4.	338° 15'	3262.76 feet	along the west side of the 20-Foot Road;
5.	340° 23'	19.26 feet	along the west side of the 20-Foot Road;
6.	342° 31'	250.51 feet	along the west side of the 20-Foot Road;
7.	337° 27'	156.17 feet	along the west side of the 20-Foot Road;
8.	347° 14'	271.04 feet	along the west side of the 20-Foot Road;
9.	348° 38'	331.85 feet	along the west side of the 20-Foot Road;
10.	353° 51'	125.10 feet	along the west side of the 20-Foot Road;
11.	359° 30'	1278.10 feet	along the west side of the 20-Foot Road;

C.S.F. No. 20,316

December 13, 1985

12.	358°	59'	2128.77 feet	along the west side of the 20-Foot Road;
13.	332°	38'	221.69 feet	along the west side of the 20-Foot Road;
14.	315°	33'	287.92 feet	along the west side of the 20-Foot Road;
15.	238°	17'	9.45 feet	along the south side of the 20-Foot Road;
16.	352°	29'	6915.35 feet	along Parcel C of Government Lands;
17.	56°	27'	1460.60 feet	along Lots 3-B and 3-A of Upper Kaimu Homesteads;
18.	39°	38'	3534.10 feet	along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela;
19.	53°	04'	10,520.90 feet	along Government Lands;
20.	53°	31' 30"	9863.30 feet	along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased;
21.	148°	00'	4100.00 feet	along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo;
22.	116°	00'	8150.00 feet	along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo;
23.	126°	59'	25,105.30 feet	along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo, to the point of beginning and containing an AREA OF 16,843.891 ACRES.

Excepting and reserving therefrom all existing trails within the above-described Parcel B.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

pt

Compiled from CSF 18,647
and other Govt. Survey
Records.

50185 RV-3

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.P. No. 20,317

December 13, 1985

PORTIONS OF GOVERNMENT LANDS OF
KAHAILI, KEHENA AND KIKALA

PARCEL C

Puna, Island of Hawaii, Hawaii

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIU" being 115.60 feet South and 9325.70 feet West, thence running by azimuths measured clockwise from True South:-

1.	46° 00'	982.00 feet along Grant 7365 to J. K. Pau;
2.	85° 00'	652.00 feet along Grant 7365 to J. K. Pau;
3.	58° 45'	1050.00 feet along Grant 7365 to J. K. Pau;
4.	73° 30'	1005.00 feet along Grant 7547 to Wm. K. Kalihoomalu;
5.	45° 46'	1197.50 feet along Grant 7547 to Wm. K. Kalihoomalu;
6.	139° 03'	50.08 feet along the north side of 50-Foot Road;
7.	45° 46'	1064.16 feet along the west side of 50-Foot Road;
8.	16° 10'	2051.31 feet along the west side of 50-Foot Road;
9.	38° 34'	1319.67 feet along the west side of 50-Foot Road;
10.	323° 16'	2381.65 feet along the south side of 50-Foot Road;
11.	270° 00'	981.59 feet along the south side of 50-Foot Road;

C.S.P. No. 20,317

December 13, 1985

12. 316° 30' 1493.59 feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road;

13. Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being: 27° 43' 20" 4458.54 feet;

14. 55° 41' 15" 171.71 feet along the northwest side of Upper Puna Road;

15. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being: 79° 01' 15" 118.82 feet;

16. 102° 21' 15" 518.59 feet along the northwest side of Upper Puna Road;

17. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being: 77° 01' 15" 213.94 feet;

18. 51° 41' 15" 284.74 feet along the northwest side of Upper Puna Road;

19. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being: 55° 01' 15" 55.24 feet;

20. 58° 21' 15" 354.39 feet along the northwest side of Upper Puna Road;

21. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being: 50° 46' 15" 118.77 feet;

22. 135° 50' 1250.91 feet along Grant 7731 to L. K. Swain;

23. 157° 30' 3467.50 feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northeast end of 50-Foot Road;

24. 127° 35' 2173.00 feet along Lot III-B of Upper Kaimu Homesteads;

25. 172° 29' 6915.35 feet along Parcel B of Government Lands;

26. 258° 17' 139.94 feet along the south side of 20-Foot Road;

27. 244° 12' 614.60 feet along the south side of 20-Foot Road;

File No. 20,317

December 13, 1983

28.	195°	08'	397.80 feet along the south side of 20-Foot Road;
29.	254°	12'	783.69 feet along the south side of 20-Foot Road;
30.	254°	05'	1202.89 feet along the south side of 20-Foot Road;
31.	254°	48'	283.02 feet along the south side of 20-Foot Road;
32.	242°	35'	876.64 feet along the south side of 20-Foot Road;
33.	245°	28'	581.05 feet along the south side of 20-Foot Road;
34.	242°	17'	539.85 feet along the south side of 20-Foot Road;
35.	246°	20'	20.81 feet along the south side of 20-Foot Road;
36.	240°	31'	1658.87 feet along the south side of 20-Foot Road;
37.	240°	47'	707.62 feet along the south side of 20-Foot Road;
38.	309°	05'	1550.70 feet along R.P. 4475, R.P. 6883, L.P. 8200, L.C.Aw. 7713, Ap. 14 to V. Kanamalu;
39.	296°	22'	753.00 feet along R.P. 4475, R.P. 6883, L.P. 8200, L.C.Aw. 7713, Ap. 14 to V. Kanamalu;
40.	286°	00'	2750.00 feet along R.P. 4475, L.P. 8199, L.C.Aw. 7713, Ap. 13 to V. Kanamalu to the point of beginning and containing an AREA OF 1930 ACRES, MORE OR LESS.

Excepting and reserving therefrom all existing trails within the above-described Parcel B.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

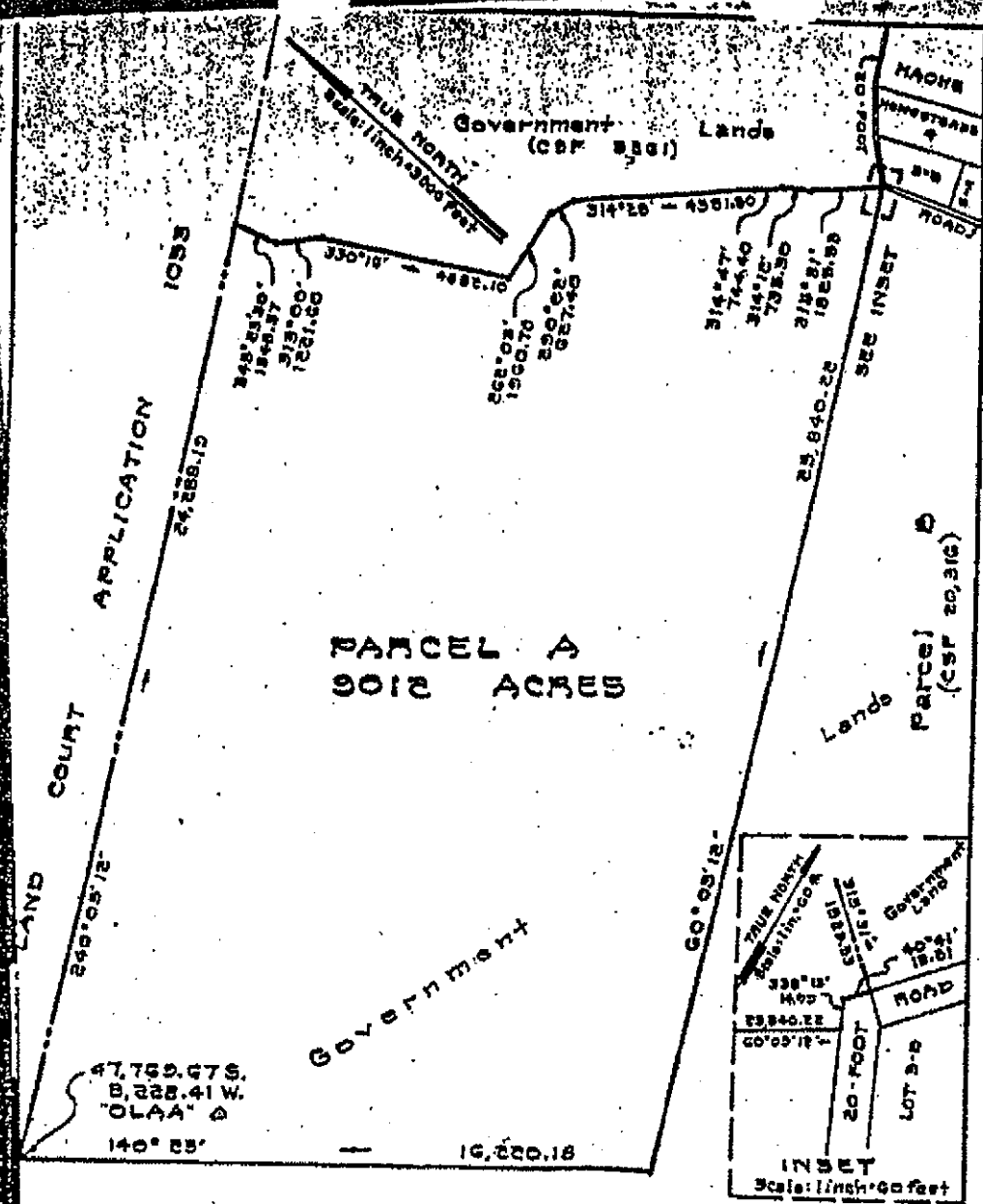
By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

Compiled from CSF 9446
and Govt. Survey Records.

pt

60185RV3

19523 466



PORTIONS OF GOVERNMENT LANDS OF
MAKUU, KAOHE, KAIMU, KAHENA, KAPAAHU AND KAMAILI
PARCEL A
Puna, Island of Hawaii, Hawaii
Scale: 1 inch = 3000 feet

H-444 (85)
G J.M.M.

MAP 1-2-10:2

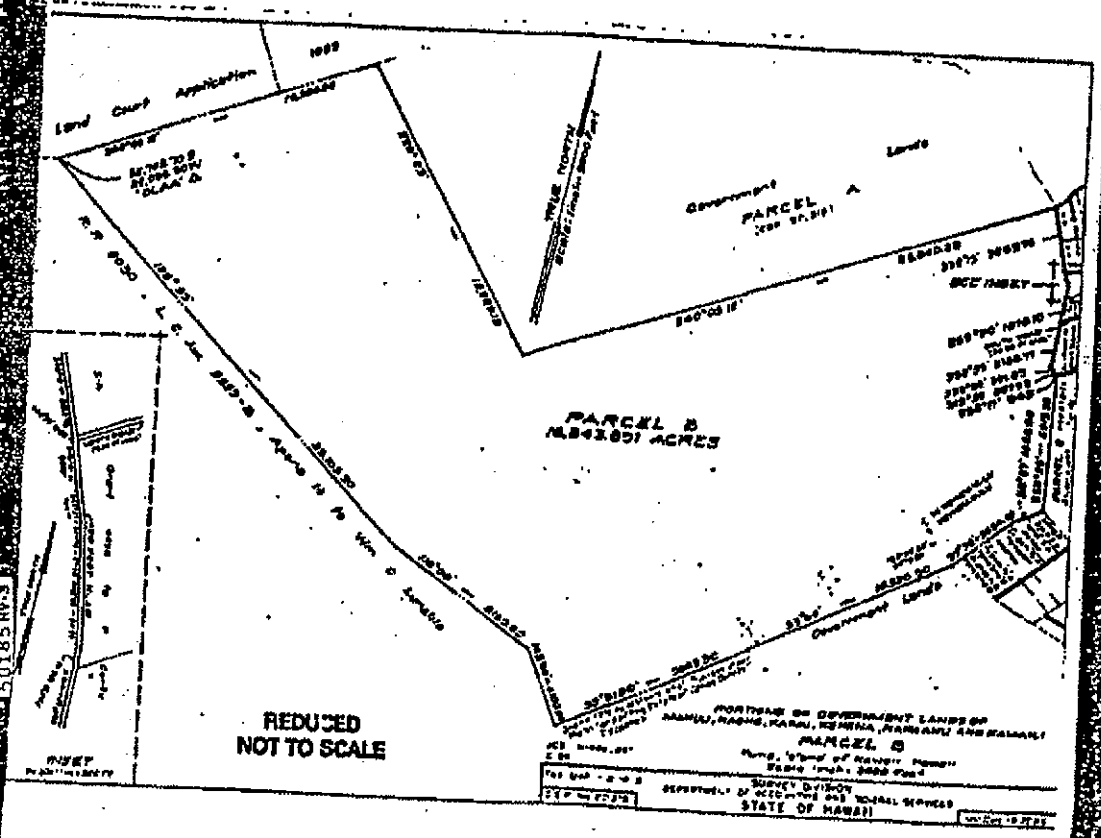
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

P. No. 20,315

R.S.N. Dec. 13, 1985

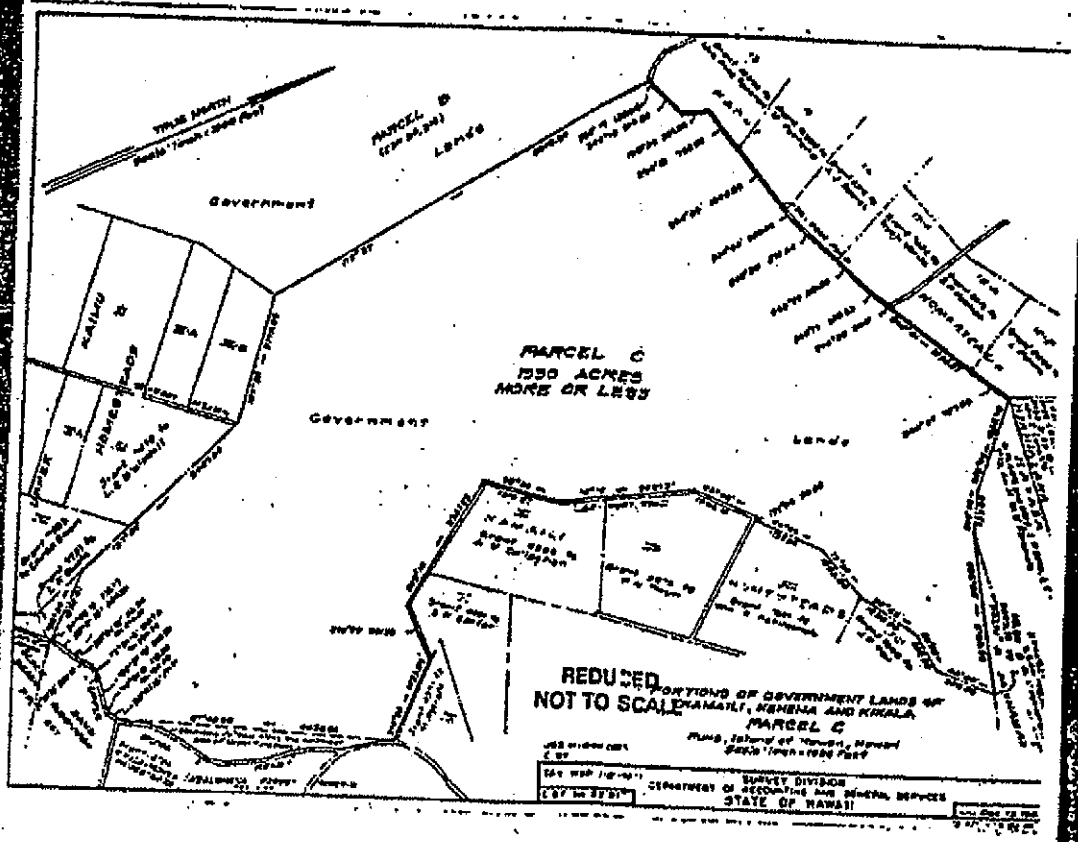
Recorder's Memo: Legibility of Writing, Typing, or Print for Reproduction in this Document when received

19523 467



Recorder's Memo: Legibility of Writing, Typing or Printing Unsatisfactory in this Document when received.

19523 468



Recorder's Memo: Legibility of Writing, Typing or Printing Unsatisfactory in this Document when received.

ATTACHMENT C

U.S. Department of Agriculture
Forest Legacy Program Implementation Guidelines dated June 30, 2003

FINAL

Forest Legacy Program Implementation Guidelines

FOREST LEGACY
CONSERVATION LAND

June 30, 2003

USDA Forest Service
State & Private Forestry
Cooperative Forestry

TABLE OF CONTENTS

TABLE OF CONTENTS 1
PART 1 - GENERAL PROGRAM GUIDELINES 3
I. Authority and Purpose of the Forest Legacy Program (FLP) 3
II. Description of Terms and Abbreviations 3
III. National Environmental Policy Act (NEPA) 8
IV. Coordination with State Forestry Agencies 8
V. Assessment of Need (AON) and Identification of Forest Legacy Areas (FLA) 8
VI. Eligibility Criteria for Establishing Forest Legacy Areas (FLAs) 10
VII. AON and Amendment Approval 11
VIII. Multi-State Identification of Forest Legacy Areas 12
IX. Project Selection Process 12
X. Program Fund Categories 14
XI. Process for Allocating Funds to Forest Service Regions/Area/IITF 15
XII. Redirection and Reprogramming of Funds 15
XIII. FLP Cost Share Requirements 16
XIV. Acquisition of Lands or Interests in Lands 17
XV. Appraisal and Appraisal Review 19
XVI. Conservation Easement Monitoring, Management, Record-Keeping & Enforcement 20
XVII. Landowner Participation 21
XVIII. Land Trust Participation 22
PART 2 - STATE GRANT PROGRAM 23
I. Grants 23
II. Acquisition of Lands and Interests in Lands by States 24
III. Reversion of Funds for Forest Legacy Inconsistency 24
PART 3 - FEDERAL ACQUISITION PROGRAM GUIDELINES 26
I. Federal Acquisition Process 26
II. Memorandum of Understanding (MOU) for Coordination of the FLP 26
III. Payment in Lieu of Taxes (PILT) 27
IV. Transition to State Grant Option Program 28
APPENDIX A- Example of a Project Selection Calendar 29
APPENDIX B- Map of the Forest Service Regions/Area/IITF 30
APPENDIX C- Office of Management and Budget (OMB) Circulars and Other Regulations 31
APPENDIX D- Examples of Cost Share Calculations 32
APPENDIX E- Information to Facilitate Landowner Participation 34
APPENDIX F- Sample Content of a Forest Stewardship Plan 35
APPENDIX G- Real Estate Record Keeping 37
APPENDIX H- Required Qualifications of an Appraiser or Review Appraiser 38
APPENDIX I- Requirements and Suggestions for Conservation Easements and Deeds 40
APPENDIX J- Sample Content for Baseline Documentation 42
APPENDIX K- Sample Graphics and Signs 44

INTRODUCTION

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

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

The guidelines are organized in three parts:

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

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

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

PART 1 - GENERAL PROGRAM GUIDELINES

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

A. Authority

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

B. Purpose of the Forest Legacy Program

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

FLP seeks to promote forestland protection and other conservation opportunities. Such purposes shall include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values. Traditional forest uses, including timber management, as well as hunting, fishing, hiking, and similar recreational uses are consistent with purposes of the FLP. Both purchased and donated lands and interests in lands through the use of conservation easements and fee-simple purchase are used to acquire forested land meeting Forest Legacy purposes from willing sellers or donors.

C. Delegations of Authority

The Secretary has delegated authority to administer all aspects of the FLP to the Under Secretary for Natural Resources and Environment (7 CFR 2.20(a)(2)(xvi)) who in turn has delegated the authority to the Chief of the Forest Service (7 CFR 2.60(a)(16). Delegations only apply within the U.S. Department of Agriculture and its agencies. The role of State and Regional programs, and the right of States to elect the State Grant Option, are contained in the authorizing statute and these program implementation guidelines.

II. Description of Terms and Abbreviations

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

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

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

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

Eligibility Criteria are a set of factors developed by the State lead agency, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC), to evaluate geographic areas to determine if they contain significant environmental values to be considered an 'important forest area' and contain "threats" of conversion to be eligible as a Forest Legacy Area (FLA).

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

Forest Legacy Area (FLA) is a geographic area with important forest and environmental values, that satisfies identified Eligibility Criteria and has been delineated, described, and mapped in a State's AON for the FLP. Acquisition of lands and interests in lands for the FLP can only occur within approved FLAs.

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

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

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

Forest Service Region/Area/IITF refers to the field units of the Forest Service responsible for FLP management and oversight within the Forest Service Regions, Northeastern Area (Area) or International Institute of Tropical Forestry (IITF).

Forest Stewardship Plans, or multi-resource management plans, are prepared with the purpose of achieving long-term stewardship of forestland. Such plans identify landowner objectives and

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

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

Geographic Regions are the collection of States that makeup the National Association of State Foresters (NASF) Regions. The three regions are: North (consisting of the States within the FS Northeastern Area), South (consisting of all the States within the FS Southern Region, and the Territories of the International Institute of Tropical Forestry), and the West (consisting of all the States within the FS Northern, Rocky Mountain, Intermountain, Southwestern, Pacific Southwest (including the Commonwealth of the Northern Mariana Islands, Guam and American Samoa), Pacific Northwest and Alaska Regions. (See Appendix B for a map of the Forest Service's Regions/Area/IITF)

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

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

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

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

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

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

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

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

Nonforest Uses-

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

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

Nontrust Allotment Lands are privately owned fee simple lands owned by tribal members and if they are forested, are eligible for the FLP when they are located within an approved FLA. Trust lands and reservations are already protected through the trust relationship between the U.S. Department of the Interior and the tribe and are ineligible for the FLP.

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

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

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

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

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

Reserved Areas are designated areas where nonforest uses (e.g. house, barn, remote recreation camps, etc.) are or will be allowed, but are inseparable from the land holding and do not have a detrimental effect on the conservation easement values. These areas shall be defined and described in the conservation easement and may be restricted in terms of their use, or provisions made through cost and time to cure and treatment. To the extent possible these areas of non-compliance should be excluded from the FLP project.

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

Secretary is the U.S. Secretary of Agriculture.

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

State Forest Stewardship Coordinating Committees (SFSCC) are defined, and their duties are described, in Section 19(b) of the CFAA (16 U.S.C. 2113). They are chaired and administered by the State Foresters, or equivalent State officials, with membership composed of representatives from the following agencies, organizations, or individuals: Forest Service; Natural Resources Conservation Service; Farm Services Agency; Cooperative State Research, Education, and Extension Service; local government; consulting foresters; environmental organizations; forest products industry; forest land owners; land trusts; conservation organizations; the State fish and wildlife agency; and others determined appropriate by the Secretary. The SFSCC makes recommendations to the State lead agency regarding the AON, AON amendments, and the determination of project priorities.

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

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

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

III. National Environmental Policy Act (NEPA)

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

It should be known that:

1. A Programmatic Environmental Assessment and a Finding of No Significant Impact was completed for the national FLP and signed by the Chief of the Forest Service.

2. Under the Federal acquisition option, the FS NEPA regulations (Forest Service's Environmental Policy and Procedures Handbook 1909.15-92.1, effective 9/21/92), the acquisition of an individual Forest Legacy tract and/or easement may be categorically excluded from the preparation of an Environmental Impact Statement or an Environmental Assessment unless scoping indicates extraordinary circumstances exist.

IV. Coordination with State Forestry Agencies

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

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

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

State lead agencies may utilize the services of land trusts or other entities in preparing the assessment. Information from existing sources may be used to prepare the AON, instead of initiating new studies that would duplicate existing data. Examples of appropriate sources include State Forest Resources Plans, State Comprehensive Outdoor Recreation Plans, growth management studies, State cultural site inventories, inventories of threatened and endangered species, and other State, regional or local plans, studies or reports. The AON shall include relevant information about both public and private lands, address the issue of how best to maintain the integrity of forestlands for future generations, and address pertinent issues as identified by the State.

At a minimum, the AON must address the following as they relate to the purpose of the FLP:

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

Using the above information the AON shall include the following:

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

The project evaluation and prioritization process outlined in the AON should reflect the direction set forth in the CFAA to give priority to lands which can be effectively protected and managed, and which have important scenic or recreational values, riparian areas, fish and wildlife values including threatened and endangered species, or other ecological values. Traditional forest uses such as forest management activities, including timber management, and

outdoor recreation opportunities are considered consistent with purposes of the FLP and are encouraged on FLP tracts when consistent with the State's AON and the conservation purposes for FLP tract acquisition. The prioritization process should implement a strategy that enhances existing protected forestlands or local and State conservation strategies as outlined in the AON.

The composition of the SFSCC is defined in Section 19(b) of the CFAA (16 U.S.C. 2113). States are encouraged to broaden this composition to include interests appropriate to benefit the FLP. This committee cooperates with the State lead agency in the preparation of the AON, identification of FLA Eligibility Criteria, the identification of proposed FLAs from which lands may be entered into the FLP, and recommendation of priority lands to be considered for enrollment in the Program.

Public participation and involvement in the AON preparation is a State responsibility. In the absence of established State procedures, NEPA may serve as an appropriate model for public involvement. The State lead agency will solicit involvement and comments on the AON from the public including State and local governments. The goals of public involvement include hearing concerns and views from interested and affected individuals and organizations, receiving new information, identifying and clarifying issues.

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

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

The identification of proposed FLAs must include:

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

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

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

environmentally important forest areas that are threatened by conversion to nonforest and be further developed through the AON.

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

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

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

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

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

VII. AON and Amendment Approval

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

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

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

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

Significant Amendments to an AON may address the following:

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

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

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

VIII. Multi-State Identification of Forest Legacy Areas

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

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

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

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

IX. Project Selection Process

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

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

Step 1: Release Project Selection Calendar with Due Dates (See Appendix A for example)
The project selection process and calendar of due date milestones are developed in consultation with the States and FS Regions/Area/IITF and communicated by the FS Washington Office.

Step 2: State Project Prioritization and Submission
FLP project applications are accepted by the State lead agency as outlined in the State's AON. The SFSCC reviews and evaluates applications according to the criteria identified in the State's AON, authorizing statute, and other relevant direction and policy, and provides recommendations to the State lead agency. Projects approved and prioritized by the State lead agency are forwarded to the FS Region/Area/IITF for funding consideration. Only projects submitted through this process will be deemed eligible. Each State will prepare a list of projects and enter or update its list for submission to the FS via the Forest Legacy Information System or other means as requested.

Step 3: Forest Service Regional Review
FS Regions/Area/IITF will review submitted projects considering State priorities and national criteria. The purpose of this review is to improve project viability, facilitate the national project selection process and advance the strategic outcomes of the FLP. FS Regions/Area/IITF will submit projects to the FS Washington Office for funding consideration.

Step 4: National Review; Develop National Project List
The FS Washington Office will develop a prioritized national project list by convening a panel. There are 3 purposes of the panel; 1) assure that all projects meet Congressional and Administration direction; 2) assure that projects meet national program goals; and 3) develop a National List of ranked projects. The composition of the panel shall be developed annually in consultation between the State lead agencies and the FS, and will be representative of geographic regions. Project evaluation and ranking is based on the following national core criteria; project readiness will be considered as well as other evaluation considerations developed in consultation with State lead agencies and FS Regions/Area/IITF. The national core criteria are:

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

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

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

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

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

X. Program Fund Categories

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

A. Project Funds

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

B. Administration Funds

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

C. AON Preparation Funds

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

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

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

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

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

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

XII. Redirection and Reprogramming of Funds

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

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

National Redirection Process

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

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

National Reprogramming Process

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

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

XIII. FLP Cost Share Requirements

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

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

Donations of land or interests in land must be documented to count as part of the nonfederal cost-share. The title does not need to be transferred to the State or federal government in order for the donation to qualify as cost share. However, if in the future, the donated lands are conveyed or the rights or title are modified in a way that is inconsistent with the purposes of the FLP then the State must restore the cost share value dedicated in the grant agreement. The value of donations may be included as part of the nonfederal cost-share if all of the following are met:

1. The donation contributes to the objectives and priorities of the State FLP as set forth in the AON;
2. All or part of the tract being donated must be within the boundaries of an FLA, and may include National Park, National Forest, National Wildlife Refuge, or other Federal land boundary, or within the boundaries of an area designated through an analogous State program with goals compatible with the FLP and be within an FLA;
3. The donor documents their desire that value of the interests may be used as cost share for the FLP project;
4. The donation of land or an interest in land must contain perpetual covenants to assure that the tract will be managed in a manner compatible with the goals for which the FLA was established;
5. The donee (holder of donated rights) is a unit of government or a non-profit conservation organization (land trust) that meets the eligibility requirements for holding a conservation easement established by the Internal Revenue Service and has as its purpose the management of lands or interests in land consistent with FLP purposes;
6. If the donation is in the form of a conservation easement then the deed needs to contain a provision that directs all of the easement holder's proceeds from a subsequent sale or exchange of interests in land be used in a manner consistent with the conservation purposes identified for the subject interests in lands;
7. The respective portion of the donation must not have been previously credited towards any Federal program's nonfederal cost share; and
8. The State lead agency approves the donation as contributing to the cost-share.

XIV. Acquisition of Lands or Interests in Lands

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

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

property is strictly voluntary;

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

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

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

Conservation easements are required to contain language pertinent to the purpose of the FLP and a reversionary provision to ensure the conservation investment of FLP into the future (Example clause language are found in Appendix I). During the development of tract specific conservation easements, a determination will be made as to whether the acquisition of mineral rights, prohibition on reserved areas, or an exclusion of the area that does not comply with FLP, would be necessary in order to protect the other rights that are being considered for acquisition. In some situations, it may be impossible to protect environmentally important forest areas pursuant to the purpose of the FLP without acquiring the mineral rights.

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

FLP need for baseline documentation.

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

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

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

XV. Appraisal and Appraisal Review

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

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

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

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

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

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

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

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

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

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

XVII. Landowner Participation

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

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

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

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

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

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

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

XVIII. Land Trust Participation

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

1. Land trusts cannot execute contracts for acquisition of interests in lands on behalf of the Federal /State Government. Land trusts may work as intermediaries for eventual Federal/State acquisition, but without an accepted land purchase option and contract with the FS there is no guarantee of Federal acquisition. No pass-through transactions shall be done without prior consultation with the FS/State.

2. With approval of the State lead agency, the FS, the land trust or the donating landowner, lands and interests in lands acquired by land trusts (pursuant to Final Guidelines Part 1, Section XIII) may be counted toward the nonfederal cost-share contribution, provided that the interests in lands permanently contribute to the FLP.

3. If a land trust proposes a pass-through transaction to the FLP it must assure that terms and conditions in the deed or conservation easement are reviewed and approved in advance by the State lead agency and/or the FS.

4. The monitoring of easements within FLAs may be performed by land trusts in accordance with the umbrella MOU for the FLP in that State and individual MOUs for specific tracts established between the State and the land trust organization.

5. Other appropriate and beneficial roles of land trusts in relation to the FLP may include: participation on the SFSCC; recruitment and facilitation of FLP projects; buyer of tracts or easements of proposed, but unfunded FLP projects; facilitators of local FLP efforts; and performing tract monitoring and management activities.

PART 2 - STATE GRANT PROGRAM

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

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

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

I. Grants

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

A. Conditions of the Grant

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

B. Eligible Activities

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

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

5. AON Planning and amendment.

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

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

C. Availability of Funds

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

II. Acquisition of Lands and Interests in Lands by States

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

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

III. Reversion of Funds for Forest Legacy Inconsistency

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

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

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

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

PART 3 - FEDERAL ACQUISITION PROGRAM GUIDELINES

I. Federal Acquisition Process

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

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

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

Certain lands are not eligible for the Federal ownership option under FLP authority because other authorities and funding sources are available for acquisition of lands or interests in lands within these federally established areas. These include lands or interests in lands located within National Forests, National Parks, National Wildlife Refuges, or other Federal Government boundaries. Proximity to Federal lands or the inclusion of Federal lands within a proposed FLA does not disqualify an area for program eligibility.

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

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

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

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

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

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

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

III. Payment in Lieu of Taxes (PILT)

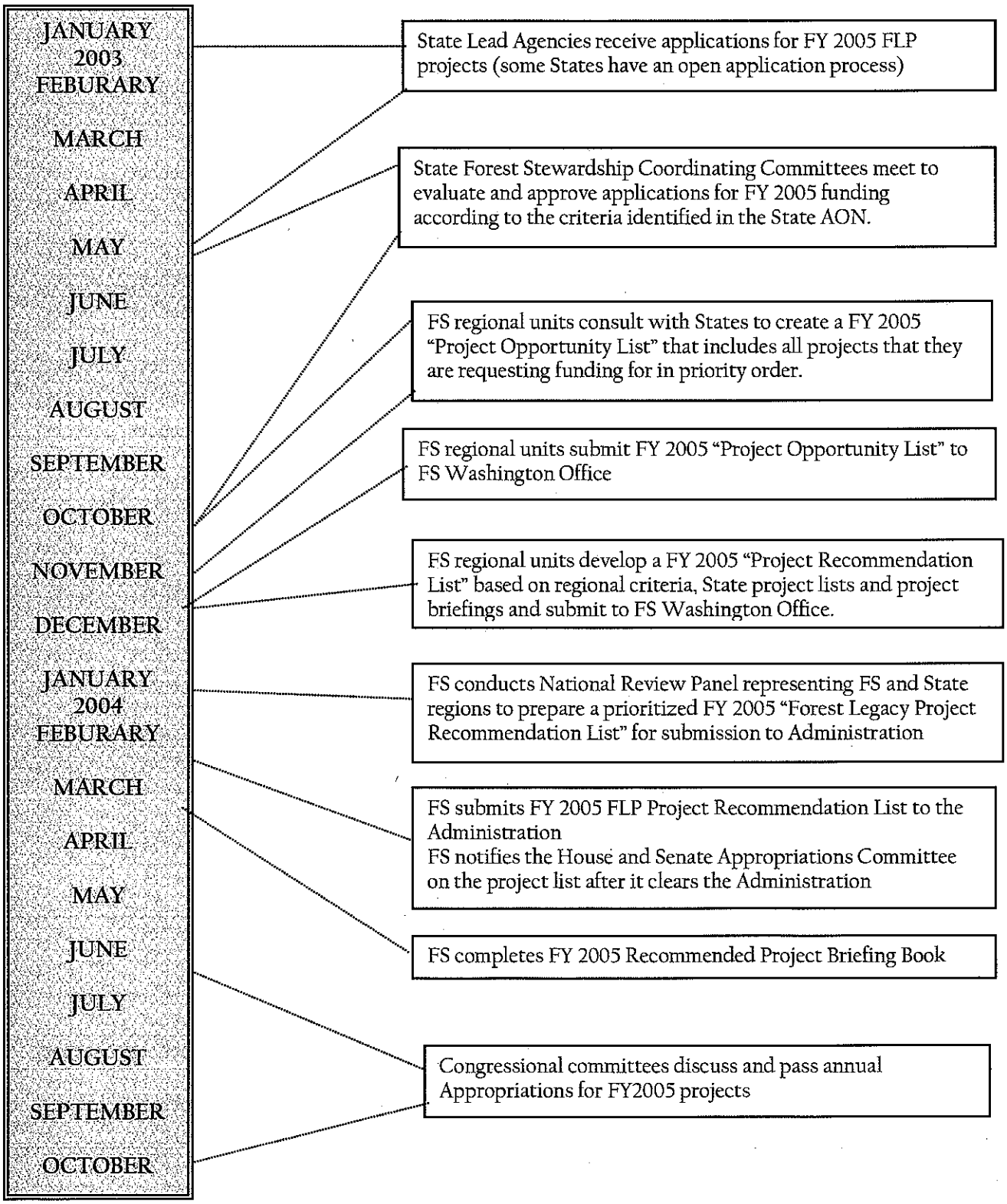
Where the Federal Government under the FLP acquires lands in fee, the Federal Government will pay PILT to the local taxing authority. No PILT will be paid on conservation easements.

IV. Transition to State Grant Option Program

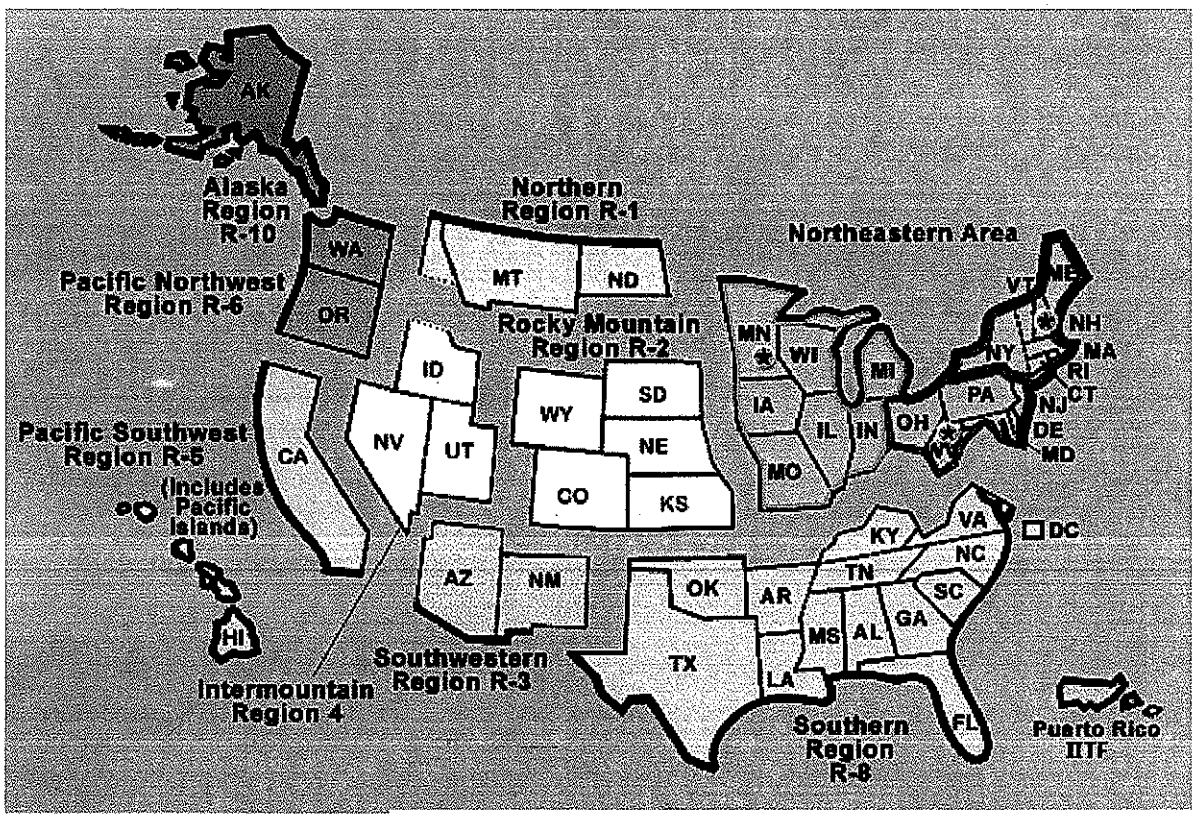
If a State elects the State Grant Option, and there are active cases being pursued by the FS, all parties (FS, State, and landowner) may agree to transfer the case to the State. If agreement to transfer is reached, then the value of the lands or interests in lands comprising the project may be transferred to the State by a FS grant. To facilitate projects transferred to the State, the FS may provide the State with copies of any appraisals, appraisal reviews, title reports, option contracts and other pre-acquisition materials for lands that have been under negotiation by the FS.

APPENDIX A- Example of a Project Selection Calendar

This flowchart outlines the basic FLP project selection process.



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



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

North: All States within the Forest Service's Northeastern Area.
South: All States within the Forest Service's Southern Region (R-8) and International Institute of Tropical Forestry (IITF).
West: All States within the Forest Service's Northern (R-1); Rocky Mountain (R-2); Southwestern (R-3); Intermountain (R-4); Pacific Southwest (R-5); Pacific Northwest (R-6); and Alaska (R-10) Regions.

APPENDIX C- Office of Management and Budget (OMB) Circulars and Other Regulations

Any award of Federal financial assistance under these guidelines will be subject to the following or its most recent update:

1. OMB Circular A-102 (10/7/1994, amended 8/29/1997), "Grants and Cooperative Agreements with State and Local Governments"
2. OMB Circular A-87 (5/4/1995, amended 8/29/1997), "Cost Principles for State, Local, and Tribal Governments" as implemented by Departmental Regulation 7 CFR 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. OMB Circular A-110 (11/19/1993, amended 09/30/1999), "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations"
4. OMB Circular A-122 (6/1/1998), "Cost Principles for Non-Profit Organizations"
5. OMB Circular A-133 (06/24/1997), "Audits of States, Local Governments, and Non-Profit Organizations" as implemented by Departmental Regulation 7 CFR 3050, "Audits of State and Local Governments" OMB Circular A-89 (8/17/1984), "Catalog of Federal Domestic Assistance"
6. 7 CFR 3017, Government Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), and
7. 7 CFR 3018, New Restrictions on Lobbying.
8. 7 CFR 3019, Uniform administration requirements (Higher education, hospitals, and non-profit organizations"

APPENDIX D- Examples of Cost Share Calculations

Equation for Calculating Cost Share Requirement

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

OR

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

Principals to Guide Calculating the Cost-Share Requirements

- To calculate the cost share requirement, the Program Manager should use the Federal FLP contribution, and not the total project costs.
- The cost share requirement should be at least 33.3% of the total Federal FLP contribution towards the project, which will equal at least 25% of the total FLP project (Federal FLP contribution plus cost share).
- The Federal contribution (Forest Service's FLP plus all other Federal contributions) cannot exceed 75% of the total project costs (all cost requirements to complete the project, including Federal and non-Federal contributions).
- The non-Federal cost share portion cannot be used as cost share for another Federal program that also requires a cost share.

Example 1- The FLP is going protect Jane Smith's 3,000 acres tract. The total cost of protecting that land is $1 million.

Total Project Costs	*Federal FLP Contribution*	*Non-Federal FLP Contribution*	*Other Federal Contribution*	*Other non-Federal Contribution*
$1,000,000	$750,000	$250,000	$0	$0

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

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

Total Project Costs	*Federal FLP Contribution*	*Non-Federal FLP Contribution*	*Other Federal Contribution*	*Other non-Federal Contribution*
$4,000,000	$1,000,000	$333,000	$0	$2,667,000

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

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

Total Project Costs	*Federal FLP Contribution*	*Non-Federal FLP Contribution*	*Other Federal Contribution*	*Other non-Federal Contribution*
$4,000,000	$1,000,000	$333,000	$1,000,000	$1,667,000

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

APPENDIX E- Information to Facilitate Landowner Participation

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

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

APPENDIX F- Sample Content of a Forest Stewardship Plan

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

Landowner Forest Stewardship Plans must:

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

A well prepared plan will:

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

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

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

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

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

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

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

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

APPENDIX G- Real Estate Record Keeping

Since Forest Legacy acquisitions are perpetual, record keeping is important. Each State shall maintain permanent records for all Forest Legacy properties. The following information is recommended to be maintained by the conservation easement holder:

A. Landowner information (name, address, phone)
B. Nomination form (including notification to landowner that property will not be purchased if negotiations do not result in amicable agreement)
C. Landowner Inspection Consent Agreement
D. Baseline documentation
E. Option agreement
F. Deed of Conservation Agreement
G. Additional warranty deeds, covenants, restrictions
H. Title Insurance Policy
I. Appraisal
J. Appraisal review
K. Forest Stewardship Plan or equivalent
L. Notification of county or local government
M. Closing statement
N. Copies of check or documentation of EFT or other form of payment
O. Copies of grant reimbursement or expenditure

The following items should also be maintained as part of the record:

1. Landowner correspondence
2. Evaluation criteria
3. Tracking/documentation of negotiation steps
4. State Forest Stewardship Coordinating Committee recommendation
5. Press release
6. Monitoring records/history

APPENDIX H- Required Qualifications of an Appraiser or Review Appraiser

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

1. a Federal land acquisition agency staff appraiser who
   a. is certified as a general appraiser in compliance with OMB Bulletin 92-06, and
   b. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)** approved for appraiser continuing education credit in the State where the appraiser is certified, or

2. a nonfederal staff or fee appraiser who
   a. is certified as a general appraiser in the state where the appraised property is located, or can obtain reciprocity or a temporary practice permit in the state where the appraised property is located, and
   b. has, within the past 10 years, completed at least the minimum classroom hours of non-duplicative education prescribed for the certified general real property appraiser classification by the Appraisal Standards Board of The Appraisal Foundation, and
   c. has completed at least 12 self-contained or summary appraisal reports of properties similar in scope and complexity to the appraised property in the preceding three years, and
   d. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions* approved for appraiser continuing education credit in the state where the appraiser is certified.

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

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

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

2. a nonfederal staff or fee appraiser who
   a. is certified as a general appraiser in the State where the appraised property is located, or can obtain reciprocity or a temporary practice permit in the state where the appraised property is located, and

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

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

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

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

APPENDIX I- Requirements and Suggestions for Conservation Easements and Deeds

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

A. Purpose and Authority Clause

Example 1:

WHEREAS, the Conservation values of the Property are consistent with the goals of the Forest Legacy Program and the establishment of this conservation easement will provide public benefits by:

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

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property. The data and explanatory text are presented in the Baseline Documentation Report, dates ____, which consists of reports, maps, photographs, and other documentation that the parties agree to provide.

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

Example 2:

The purpose of this easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. – 2103c) as amended, on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian areas, and other ecological values, and to ensure that the Property is available for the sustainable and cost effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program. The purposes also include encouragement of management for and the production of economically sustainable and commercially viable forest products consistent with the other purposes of this easement and also include the long-term protection of the Conservation Property's capacity to produce economically valuable forestry products, and the encouragement of management of the property for industrial or commercial forestry only if consistent with the other purposes of this Conservation Easement.

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

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

Example 3:

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

Example 4:

The purpose of this easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values.

Example 5:

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

B. Reversion Clause:

The Easement Holder acknowledges that this Easement was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in Section 5.A, unless the United States is reimbursed the market value of the interest in land at the time of disposal. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

APPENDIX J- Sample Content for Baseline Documentation

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

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

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

For additional Information on Baseline Documentation:

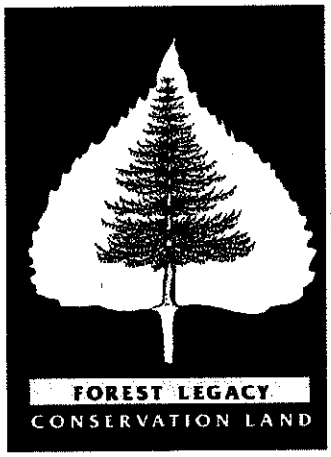
Land Trust Alliance. 2001. *Working Forest Conservation Easements.*

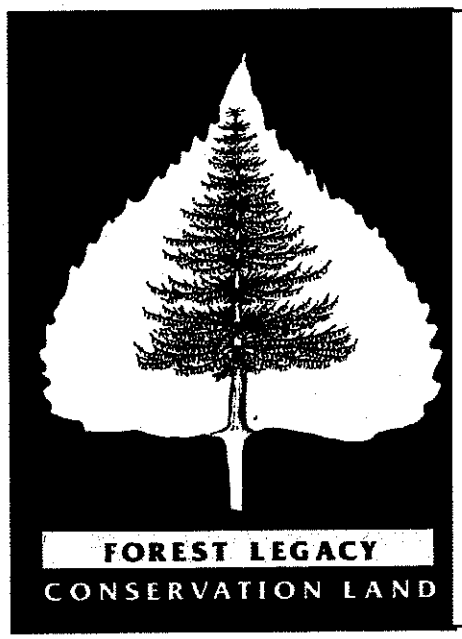
Land Trust Alliance and Trust for New Hampshire Lands. 1991. *The Conservation Easement Stewardship Guide.*

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

APPENDIX K- Sample Graphics and Signs

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





Optional Text Box that can include:

- *Reference to FLP;*
- *Description of land conservation;*
- *Identify contact information;*
- *Address public access;*
- *Include participants' logos; or*
- *Other items.*

ATTACHMENT D

Section 11 of the Memorandum of Agreement between the Department of Land and Natural Resources, State of Hawaii and the Office of Hawaiian Affairs executed June 27, 2006

ATTACHMENT D

Section 11 of the Memorandum of Agreement between the Department of Land and Natural Resources, State of Hawaii and the Office of Hawaiian Affairs executed June 27, 2006

11. Comprehensive Management Plan. Upon execution of this Agreement, the Parties agree to develop the Plan for the Property. The Parties shall form an advisory council for the development of the management plan consisting of Pele Defense Fund and other interested community members mutually selected by DLNR and OHA. The cost of developing the Plan shall be funded as provided in paragraph 15 below.

The Plan shall be developed according to the following conditions and may contain such other terms and conditions agreed to by the Parties:

a. *Assessment.* The Plan shall include an inventory and assessment of natural and cultural resources, historic sites, risks, threats to resources, interpretive values, and economic development potential. The section on economic development potential shall identify those uses consistent with: status as a forest reserve, the protection of traditional and customary uses of the site, sustainable use and protection of the resources of the site, and the terms of the Forest Legacy Program funding.

b. *Existing Improvements.* Subject to the availability of funding and identification as a priority action under the Plan, management of the Property shall include maintenance and repair of existing roads and historical sites on the Property.

c. *Allowable Uses of Property.* Subject to requirements of state law applicable to forest reserves, to any other applicable state law, to any applicable requirements of the Forest Legacy Program, and to future revision by the Parties, allowable uses of the Property shall include but

are not limited to the following:

(1) Public Access. Public Access shall be allowed to the extent required by federal and state law and the Guidelines. Public access beyond that required by law and the Guidelines will be determined by the Parties based on a comprehensive inventory of the Property, which will identify and assess the access points, the natural and cultural resources, the historic sites, the risks, the threats to resources, and the interpretive values.

(2) Cultural, natural resources, open space and recreational use. The general use of the Property shall be for cultural, natural resource, and open space purposes. Passive recreational or educational purposes that require neither surface alteration subject to the local grading ordinance nor other development of the land may be permitted unless specifically excluded by the Plan. The Plan may, but need not, allow development of recreational use infrastructure and facilities such as trails, access roads, parking, fencing, cultural and environmental education facilities (e.g. kiosks).

(3) Preservation of Plant and Wildlife Habitat. The Parties will protect and enhance native plant and wildlife habitat, the natural, scenic and open-space nature of the Property.

(4) Traditional Hunting and Gathering Practices. Wildlife hunting not prohibited by applicable laws or regulations may be permitted, if it is conducted in a manner that does not significantly deplete native wildlife resources or damage the ecology of the Property. Traditional hunting and gathering practices shall be governed in accordance with federal and state law, the Guidelines, and the PDF Final Judgment.

(5) Water. Subject to written approval from OHA and DLNR, exploration or extraction of water resources and any activity associated therewith, with the exception of water

needed for management practices agreed upon in the management plan may be permitted as long as there is no damage to natural resources, existing forests, or soils.

d. *Prohibited Uses.* The following "non-forest uses" as defined by the Forest Legacy Program are uses of the land inconsistent with maintaining forest cover and shall be prohibited on the Property.

(1) Mineral Extraction. Any exploration or extraction of oil, gas, minerals, steam, hydrocarbons, soil, sands, gravel or other material on or beneath the Property for the purpose of exporting these materials/resources off the Property shall be prohibited.

(2) Grading and Excavation. Alteration of landforms by grading or excavation of topsoil, earth, or rock, inconsistent with Forest Legacy Program guidelines shall be prohibited. Alteration of landforms necessary or appropriate for appropriate public access, cultural restoration or wildlife or forest management, or emergency purposes (such as fire fighting) and in keeping with good natural resource management practices shall not be prohibited.

(3) Subdividing Land. The division, subdivision, partition, or de facto subdivision of the Property inconsistent with the Forest Legacy Program guidelines shall be prohibited. However, this paragraph does not prohibit the lease, license, or other temporary disposition of a portion of the Property or a voluntary conveyance to a governmental or nonprofit entity for conservation or public access purposes.

(4) Commercial and Industrial Uses. The establishment of any commercial or industrial uses inconsistent with the Forest Legacy Program Guidelines shall be prohibited.

(5) Signage. The construction, placement, or erection of any sign or billboards, excepting signs necessary for management purposes or to control unauthorized or dangerous activities, or signs, appropriately placed, that acknowledge the financial support of donors in the

purchase of the Property shall be prohibited.

A preliminary investigation of potential access and trail routes will be conducted to consider exposure to specific dangerous natural conditions. It is the intent of the Parties to examine using the warning sign design and placement process pursuant to Act 82 SLH 2003, and the ancillary Title 13, Chapter 8 Hawai'i Administrative Rules as appropriate.

(6) Storage of Waste. The storage, dumping or accumulation of trash, garbage, or waste on the Property shall be prohibited.

(7) Exotic Plants or Animals. The introduction of invasive exotic animals or plants that would alter or impair the conservation values of the Property shall be prohibited.