

The Regulations* of the Forest Legacy Program

§ 1570. Purpose of Chapter.

The purpose of this chapter is to define rules and procedures necessary for implementation of the California Forest Legacy Program, hereinafter called the "Program." The Program is a combination of the requirements of the California Forest Legacy Program Act of 2007 and the Federal Forest Legacy Program that provides funding and general guidelines for projects purchased with federal funds.

§ 1571. Definitions.

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

"Act" means the California Forest Legacy Program Act of 2000.

"Applicant" means a landowner who is proposing a project for inclusion in the Program and is eligible for cost-sharing grants pursuant to the Federal Forest Legacy Program (16 U.S.C. Section 2103 et seq.) or who is eligible to participate in the California Forest Legacy Program and the operation of the Program, with regard to that applicant, does not rely on federal funding.

"Assessment of Need (AON)" refers to the California Forest Legacy Program Assessment of Need submitted to the USFS in August, 1995, and amended in September, 2000.

"Baseline documentation" means a depiction or description of the land on the date the easement restrictions become effective.

"Biodiversity" means a component and measure of ecosystem health and function. It is the number and genetic richness of different individuals found within the population of a species, of populations found within a species range, of different species found within a natural community or ecosystem, and of different communities and ecosystems found within a region.

"Board" means the State Board of Forestry and Fire Protection.

"Conservation easement" has the same meaning as found in Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

"Conversions" is a generic term for land use situations in which forest lands become used for non-forest uses, particularly those uses that alter the landscape in a relatively permanent fashion.

"Department (CAL FIRE)" means the Department of Forestry and Fire Protection.

"Director" means the Director of Forestry and Fire Protection.

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“Eligible Activities” include purchases of land or interests in land from willing sellers, facilitation of donations of lands or interests in lands to a qualified and willing grantee, and establishment and documentation of baseline conditions and development of a Forest Stewardship Plan.

“Federal Appraisal Standards” means the appraisal standards contained in the publication entitled “Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 1992”.

“Federal Forest Legacy Program Implementation Guidelines” means those guidelines that direct the Program when federal funds are utilized for eligible activities under the Program.

“Forest land” is land that can support 10-percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources, including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits.

“Forest Legacy Area (FLA)” means areas designated in the AON to be included in the Program.

“Forest Management” means those forest activities, including timber harvesting, consistent with the purposes of this chapter.

“Forest Stewardship Plan” means a multi-resource management plan prepared for the purpose of achieving long-term stewardship of forest land. Necessary components are landowner objectives and actions that will protect and manage soil, water, range, aesthetic quality, recreation, timber, and fish and wildlife resources.

“Fully Funded Project” means an application that has been allocated, through a single or multiple grants, the full “asking” price for the interest in the property.

“Landowner” means an individual, partnership, private, public, or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own private forest lands or woodlands.

“Lands or Interests in Lands” means either an outright fee simple purchase or an interest in land such as a conservation easement.

“Local government” means a city, county, district, or city and county.

“Maximum Sustained Production of High Quality Timber Products (MSP)” is the production goal in a Timber Harvest Plan, Sustained Yield Plan or Nonindustrial Timber Management Plan. MSP is achieved by meeting requirements of Sections 913.11, 933.11, or 953.11 of Title 14 of the California Code of Regulations, or as otherwise provided in Article 6.8, Subchapter 7 of these regulations.

“Monitoring” means a visual inspection of the property, occurring no less than once a year, and documented by a written report to explain the condition of the property at the time of inspection.

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“Nonfederal Match” means one of 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, or donated to, the federal government; 2) non-federal costs associated with Program implementation; and 3) other non-federal costs associated with a grant or other agreement which meets FLP purposes.

“Nonforest Uses” include 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) and uses of the land that may be compatible with forest uses as part of an undeveloped landscape (including cultivated farmland, pasture, rangeland, open water and wetlands). The first category is generally excluded from the Federal forest Legacy Program while the second category should be less than 25% of the total easement area.

“Nonprofit organization” means any qualified land trust organization, as defined in Section 170(h)(3) of Title 26 of the United States Code, that is organized for one of the purposes of Section 170(b)(1)(A)(vi) or 170(h)(3) of Title 26 of the United States Code, and that has, among its purposes, the conservation of forest lands.

“Non-trust Allotment Land” means land privately owned in fee simple by tribal members. Forested Non-trust Allotment Lands are eligible for the Federal Forest Legacy Program when located within a Forest Legacy Area (FLA).

“Program” means the California Forest Legacy Program established under this chapter.

“Project” means a proposal (application) to the State for the acquisition of lands or interests in lands that has been fully or partially funded.

“State Forest Stewardship Coordinating Committee (SFSCC)” is a committee, established as a requirement of the Program, to make recommendations to the U.S. Secretary of Agriculture concerning those forest lands that should be given priority for inclusion in the Forest Legacy Program. (Cooperative Forestry Assistance Act, 16 U.S.C. § 2113). Members include State Foresters, or equivalent State officials, and representatives from the following agencies, organizations, or individuals: U.S. Forest Service; Natural Resource Conservation Service; Farm Services Agency; Cooperative State, Research, Education and Extension Service; local government; consulting foresters, environmental organizations; forest products industry; forest landowners; tribal representatives; land trusts; conservation organizations; the California Department of Fish and Game; and others determined appropriate by the Secretary.

“Traditional Forest Uses” include activities which provide various public benefits including forest products, forage, clean water, fish and wildlife habitat, rare and native plants, public recreation access, cultural resources, and/or scenic enjoyment.

“WCB” means the Wildlife Conservation Board.

“Woodlands” are forest lands composed mostly of hardwood species such as oak.

§ 1572. Eligibility Criteria.

(a) Every application shall provide sufficient information to enable the Director to verify the parcel's eligibility for the Program and to understand the conservation objectives and the parcel's environmental value or potential to protect forest and aquatic resources.

(b) Proposed projects shall meet the eligibility criteria set forth in this section prior to review pursuant to the ranking criteria set forth in Section 1573.3. To be eligible for participation, private forest land parcels proposed for inclusion in the Program shall comply with all of the following:

- (1) Be threatened by potential conversion.
- (2) Be owned by landowners who are willing and interested in selling or donating lands or interests in lands.
- (3) Be forested with at least 10-percent canopy cover by conifer or hardwood species, or be capable of being so forested under natural conditions.
- (4) Possession of one or more environmental values of great concern to the public and the state:
 - (A) Important fish and wildlife habitat.
 - (B) Areas that can help maintain habitat connectivity across landscapes.
 - (C) Rare plants.
 - (D) Biodiversity.
 - (E) Riparian habitats.
 - (F) Oak woodlands.
 - (G) Ecological old growth forests.
 - (H) Other key forest types and seral stages that are poorly represented across California.
 - (I) Lands that directly affect water quality and other watershed values.

(5) Provision for continuity of one or more traditional forest uses, such as timber harvesting and rangeland livestock production which is utilized for economic purposes, or habitat maintenance and restoration that addresses fire hazard, mortality from pests and disease, carbon storage, restocking of underutilized forests, and reduction of non-native invasive species.

(6) Possession of environmental values that can be protected and managed effectively through conservation easements at reasonable costs.

(7) Be at least partially within or adjacent to a Forest Legacy Area.

(8) Be available for future timber harvesting, grazing or recreation (e.g. hunting, fishing, hiking and other similar uses) and not be prohibited from these activities by any statute, previous conservation easement, or other regulatory requirements.

§ 1572.1. Eligible Costs.

The following costs are eligible for reimbursement by state or federal funding:

- (a) the purchase price of the lands or interests in lands;
- (b) the development of the conservation easement;
- (c) development of the Forest Stewardship Plan;
- (d) the title report;
- (e) the survey work necessary to qualify for a certificate of possession and documentation of the presence or absence of hazardous material;
- (f) baseline documentation; and
- (g) the appraisal costs to the standard dictated by funds used.

If federal funds are used for the project the appraisal must meet Federal Appraisal Standards. Federal funds cannot be used for appraisals of outright donations of easements. All Federal Forest Legacy Program funds, regardless of the category to which they are allocated, are subject to a 25% nonfederal match.

§ 1572.2. Ineligible Costs.

The cost of the following activities shall not be financed by funds from the Act:

- (a) appraisals of outright donations of conservation easements; and
- (b) monitoring.

§ 1573. Applications and Content.

Every application shall provide sufficient information to enable the Director to verify the parcel's eligibility for the Program and to understand the conservation objectives and the parcel's environmental value or potential to protect forest and aquatic resources. Landowners proposing parcels to be considered for inclusion in the Program shall be required to submit an application, provided by the Director, titled "California's Forest Legacy Application" (rev. March 2005), found at http://www.fire.ca.gov/resource_mgt/downloads/2005-06LegacyApplicationForm.pdf, and herein incorporated by reference, that includes, but is not necessarily limited to, the following information:

- (a) name and address of landowner;
- (b) location, zoning, acreage, and uses of the property;
- (c) how title is to be conveyed;
- (d) landowner goals and objectives;
- (e) an evaluation of the values of the parcel as they pertain to riparian and hydrological areas, vegetation type, recreational opportunities, scenic and cultural resources, forest productivity, fish and wildlife habitat, threatened and endangered species, ecological community and connectivity, conversion threats, acquirability, and manageability;
- (f) financial information regarding estimated value of the property, estimated value of the interest to be conveyed to the Program, additional funding sources, liens and encumbrances;
- (g) preliminary information on what rights are to be retained or conveyed within the conservation easement; and
- (h) the signature of the landowner or legal agent allowing Department personnel or their agents access to the property, at a mutually agreeable time, for purposes of verifying eligibility and/or determining ranking.

§ 1573.1. Applications Review.

The Director shall determine whether the application proposed for inclusion in the Program meets the eligibility criteria prescribed by Section 1572. The Director shall determine eligibility of an application within 180 days of the date of receipt, and shall notify the applicant in writing of approval or disapproval of the application within 10 days of the decision of the Director. The written notice regarding a disapproval decision shall state the reason for the disapproval of the application and what changes, if any, can be made to warrant a re-submittal.

Parcels for which applications have been submitted shall require a field review by representatives of CAL FIRE and also may require a field review by representatives of the Department, USDA Forest Service and/or members of the SFSCC and/or representatives of the WCB and/or personnel from

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other agencies as may be necessary to assess the eligibility and the environmental value of the proposed parcel.

§ 1573.2. Disapproval of Application.

The Director may disapprove an application in any of the following circumstances:

- (a) The application does not satisfy the eligibility criteria or selection criteria.
- (b) Clear title to the specified interest (i.e. conservation easement or fee simple title) in the land cannot be conveyed.
- (c) At the time funding was requested, other projects ranked higher.
- (d) There is insufficient money allocated through the federal or state process to carry out the acquisition.
- (e) The applicant requires a government entity other than the Department of Forestry and Fire Protection to hold title to the easement, when the primary purpose of said easement would be conservation of working forest lands (not applicable to lands primarily conserved for wildlife or recreational purposes).
- (f) Other relevant considerations may be established by the Director on a case-by-case basis including, but not limited to, when the parcel cannot be effectively managed or monitored.

§ 1573.3. Priority Ranking of Approved Applications.

- (a) Each approved application shall be ranked based upon the extent to which it satisfies the following selection criteria:
 - (1) The nature of the environmental values proposed for protection, and whether they can be managed and monitored efficiently and effectively.
 - (2) Whether the parcels are likely to become isolated from other areas maintained for key forest resources by development on adjacent parcels.
 - (3) The parcel's proximity to other protected lands.
 - (4) Whether the landowner's management goal for his or her parcel is compatible with the resource protections he or she is proposing.
 - (5) Whether a nonprofit land trust organization, public agency, or other suitable organization has expressed an interest in working with the Department and the landowner to establish and/or monitor the easement.
 - (6) Whether other sources of funding for easement acquisition, closing costs, monitoring, and other costs, are available.

(b) Where Federal funding for an application is sought, ranking shall be in accordance with the criteria specified in the Federal "Project Scoring Guidance" (rev. June 2010), herein incorporated by reference.

(c) Preferential ranking shall be given to those applications with one or more of the following selection criteria:

- (1) Applications that have timber harvesting which is utilized for economic purposes, delivered to mills or cogeneration biomass plants, and generates revenue and employment.
- (2) Applications with rangeland forage cover that is utilized for commercial grazing operations.
- (3) Applications that produce forest product yields on a continuous/periodic basis, and have long-term harvesting plans.
- (4) Applications that harvest and utilize forest products such that actions reduce fire hazard, mortality from pests and disease, increases total carbon storage, and provides biomass for purposes of offsetting fossil fuel use.
- (5) Applications that have fewer limitations or exclusions to commercial timber harvesting or rangeland forage grazing.
- (6) Applications that include restocking of underutilized forests and improve growth rates on the forest land.
- (7) Applications with land zoned as Timber Production Zones.
- (8) Applications which include improvement of livestock forage conditions and reduction of non-native invasive species that adversely affect forage conditions and other natural species habitats.
- (9) Applications with high site productivity for production of timber or livestock grazing forage.

(d) Other relevant considerations may be established by the Director on a case-by-case basis.

§ 1573.4. Submitting Ranked Applications to the United States Forest Service.

Once a year, following written direction from the USDA Forest Service (USFS), the Director shall rank all accepted applications. The list of ranked applications shall be submitted to the USFS.

§ 1573.5. Availability of State Funds.

Projects may be funded with California Forest Legacy Program funds or other State funding sources if sufficient funds are allocated for that purpose.

The Director shall seek a resolution from the Board when necessary to enter into agreements with other government agencies or boards to fund FLP projects.

§ 1573.6. Non-Funded or Partially Funded Applications.

Applicants whose projects were on the list of ranked applications submitted to the USFS pursuant to Section 1573.4 but did not receive funding shall be notified. Non-funded and partially funded applications will automatically be considered for the next cycle of funding unless the applicant wishes to withdraw the application. Applications may be amended at this time pursuant to Section 1573.1.

Held-over applications and amended eligible applications will be ranked each year with new applications according to Section 1573.3.

§ 1574. Conservation Easement Terms and Conditions.

(a) Recreation projects that perpetually prohibit timber harvest and or grazing are limited to not more than 15% of the timberland and not more than 15% of the grazing land respectively.

(b) Perpetual protections that prohibit timber harvesting are limited to not more than 15% of the property.

(c) Perpetual forest management prescriptions on all of the timberland on the property, except that timberland preserved pursuant to (a) or (b) above, will provide for the long term optimization of MSP.

(d) Perpetual forest management prescriptions that provide for the long term optimization of MSP shall also contribute to the long term protection and rehabilitation of watershed function, hydrologic stability and wildlife habitat.

(e) Perpetual protections shall include the prohibition of the building of structures and roads in any capacity other than for the potential purposes of:

- (1) Owner and on-property management & labor housing.
- (2) Open-space based commercial recreation.
- (3) Production, processing or value added manufacturing of forest or rangeland derived products produced on the property.

(4) The generation or capture of energy from wind, solar, or hydroelectric.

(5) Placement of cell phone towers.

(6) The Director may place restrictions, such as to size and location, for any or all of the purposes described in (1) through (5) above and may require the grantor to seek grantee's prior written approval. When such written approval is required, grantee shall consider the cumulative impact of all structures and improvements, and shall not approve such structures or improvements that cumulatively violate the conservation purpose or materially impair the conservation values.

(f) Perpetual protections shall include the prohibition of the severance of property rights on the property in any capacity other than for the potential purposes of:

(1) Property line (lot line) adjustments with contiguous owners of conservation easement property meeting these criteria herein, and with the express approval of the Conservation Easement trustees of both properties.

(2) Egress and regress right-of-way may be granted to in-holders or landlocked landowners, where the granting of such rights will constitute a contribution to the conservation values of the region.

(g) The Director may require the Department of Forestry and Fire Protection to hold title (be named grantee) to those conservation easements that are primarily for the purposes of conserving working forest lands.

§ 1575. Funded Applications (Projects).

For those projects which have been fully or partially funded, the Director shall notify the applicant that he/she has been awarded funding for the project.

§ 1575.1. Responsibilities of the Department.

The Director shall send to each approved applicant a Preliminary Purchase Agreement outlining what, in general, is to be purchased and the tasks to be completed, and stating that the specific terms will not be known until the appraisal is complete (if the project is not a donated easement).

The purpose of the Preliminary Purchase Agreement is to define the nature of the work to be done and who will do it. The Department shall work with the landowner and/or their representative to obtain items necessary to complete the project; these may include, but are not limited to, the preliminary title report, survey for certificate of possession, hazardous materials assessment, and, where applicable, development of the conservation easement and appraisal.

Except in the case of a full and complete donation of land or interest in land the following shall apply with regard to land or interest in land subject to inclusion into the Program:

- (a) the landowner must be informed of the fair market value of that sale of the property and that the sale is strictly voluntary;
- (b) the landowner must be informed that Federal and/or State appraisal standards must be met;
- (c) the landowner must be notified in writing that the property will not be purchased if negotiations do not result in amicable agreement; and
- (d) the landowner must be informed that payment for lands or interests in lands shall be no more than fair market value as determined by the appraisal.

§ 1575.2. Landowner Responsibilities.

Applicants whose projects are fully funded (i.e., funds allocated to the project sufficient to satisfy the landowner's "asking" price, but not in excess of the appraised value) must complete their project within two years of the state receiving grant funds for their project and will be required to:

- (a) Work with the state to obtain those items necessary to complete the project; these may include, but are not limited to, the preliminary title report, survey for certificate of possession, hazardous materials assessment, and, where applicable, development of the conservation easement and appraisal.
- (b) Except in cases of a full and complete donation of land or interest in land, select and retain an independent real estate appraiser to determine the value of the lands or interests in lands which shall be calculated by determining the difference between the fair market value and the restricted value of the property. This appraisal must be to State and/or Federal Appraisal Standards and will be subject to review by a qualified review appraiser. CAL FIRE approval of the appraiser and the agreement on the land to be appraised is required prior to commencement of appraisal.
- (c) Convey interest in lands to achieve the land conservation objectives of the Program.
- (d) Convey those interests in perpetuity.
- (e) Prepare and periodically update a management plan, equivalent to, or better than, a Forest Stewardship Plan.
- (f) Manage property in a manner consistent with the purposes for which the land was entered into the Program with no conversion to other uses unless such uses are specifically allowed within the terms of the conservation easement, furthermore hunting, fishing, hiking and similar recreational uses shall be considered to be consistent with the purposes of the Program.

(g) Endow or secure funding for monitoring costs.

§ 1575.3. Disbursements of Funds.

The Director shall not disburse any funds until:

(a) The applicant agrees that any conservation easement acquired shall be used by the applicant only for the purposes for which the funds were requested.

(b) The conservation easement meets the following minimum standards:

(1) Restrictions to timber management shall be limited to those that will continue to provide MSP.

(2) The property-wide purpose of the easement is to maintain the property's capacity for producing natural resources and supporting a range of associated economic activities including traditional uses such as agriculture, forestry, and recreation.

(c) The applicant agrees to restrict the use of the land in perpetuity.

(d) The Director finds that any disposition of the easement is consistent with, and in furtherance of, the purposes of this chapter, that the recipient of the easement is qualified to monitor and enforce the easement, and that the conservation provisions of the easement remain in effect following the transfer.

§ 1576. Responsibilities for Monitoring.

The Department, or other government entity, or nonprofit land trust organization acquiring an easement pursuant to this chapter shall monitor, in perpetuity, that easement in order to assess the condition of the resources being protected and to ensure that the terms of the easement are being followed. Entities acquiring easements may also enter into cooperative agreements for monitoring responsibilities with another qualified entity.

The Department shall ensure that any entity acquiring a conservation easement acquired pursuant to this chapter has adequate funding for, or otherwise adequately provides for, easement monitoring pursuant to this chapter, and is able to enforce the easement if its provisions are not satisfied.

Monitoring shall occur no less than once a year and include at a minimum: evaluation of overall condition of the property compared to the condition documented in the Baseline Conditions Report, including a comparison of observed conditions to both the baseline photos and the aerial photos; observations of any violations of terms of the conservation easement; and review of pertinent documentation, e.g., timber harvesting documents, inspection reports, mill receipts, etc.

A written report with a qualitative assessment of compliance with the terms of the conservation easement shall be sent by the monitoring entity to the easement holder within 30 days of visual

inspection; any significant differences from the baseline conditions should be noted. The easement holder should immediately address any violation of the conservation easement with the landowner. The landowner should have an opportunity to correct the breach. After a reasonable time period, if the breach is not corrected, enforcement action may be taken, including but not limited to legal action. The entity holding the conservation easement has the responsibility to enforce the conservation easement.