

15. Fee Simple Purchase Deed Language

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

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

*Mandatory language appears below.

A. Purpose and Authority

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

Example 1:

WHEREAS, the Conservation values of the Property are consistent with the goals of the Forest Legacy Program and the establishment of this property, known as project name, will provide public benefits by: preventing conversion of forest land and forest resources; protecting and enhancing water quality and water supplies; protecting wildlife habitat and maintaining habitat connectivity and related values to ensure biodiversity; protecting riparian area; maintaining and restoring natural ecosystem functions; and maintaining forest sustainability and the cultural and economic vitality of rural communities.

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

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

Example 2:

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

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

Example 3:

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

B. Management Objectives

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

The property will be managed in a manner consistent with the Forest Legacy Program and according to a Multi-Resource Management Plan to ensure long-term sustainability and protection of the forest resources and other conservation values for which the property was acquired. Management activities must take into account the long-term viability and health of the ecosystem. There may be no activities or uses of the property which are not compatible with the long-term forest health and sustainability. This limitation includes limitations on activities of short duration that may have long-term impacts such as soil compaction or disturbance of fragile systems. There will be no surface disturbance of the property other than what is necessary for management activities which are needed for long-term forest health and sustainability. Disturbance must be limited but could include construction of new recreational or forest management roads or trails if such uses were articulated as a purpose of the acquisition, construction or replacement of culverts or construction of structures that are necessary to meet the purposes of the acquisition. There may be limited extraction of sand or gravel for onsite management activities. These activities will be outlined in the Multi-Resource Management Plan. Protection of the forest is the primary purpose of this acquisition any management, structures, disturbance or alteration will be done only if needed for effective protection, management or restoration of the forest.

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

E. Ecosystem Service Markets (mandatory language, as applicable)

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

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

F. Transfer and Disposal (mandatory language)

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

Transfer Provision

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

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

Disposal held by State Lead Agency:

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

The United States' proportionate share is [%], which was determined by dividing the FLP's contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage. The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient [Insert name State Lead Agency] and the R/A/I.

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

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal. If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the [Insert name State Lead Agency] and the USDA Forest Service must immediately be notified.

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

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

The United States' proportionate share is [%], which was determined by dividing the FLP's contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage. The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient [Insert name State Lead Agency] and the R/A/I.

The form of the United States' reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation

purposes. This fee simple deed shall not be deemed disposed in whole or in part until the United States receives reimbursement as provided in this paragraph.

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

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

Disposal of a Cost-Share Tract

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

The United States' proportionate share is [%], which was determined by dividing the portion of the market value of the interest that, at the time of its acquisition, was used to meet the cost-share requirement by the value of the interest at that time, and expressing the result as a percentage."* The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) and is completed by a certified general appraiser approved by the grant recipient [Insert name of State Lead Agency] and the R/A/I.

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

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

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

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