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Review of Idaho's Forest Legacy Program

by

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ABSTRACT

The Forest Legacy Program is a federally funded program that helps states acquire conservation easements on private, working forestlands. The intent of the program is to protect timber producing, environmentally significant, private forestlands from being converted to non-forest uses. Idaho has participated in the program since 2002, acquiring conservation easements on about 90,000 acres. Idaho Department of Lands requested a report reviewing the program's activity in the state, responsibilities including financial obligations required of the state, and other emerging issues associated with the state's involvement in the program. The contents of this report are based on a review of Forest Legacy Program policy documents, project documentation, interviews with federal and state agencies involved in the program, and interviews with project sponsors. The review finds that Idaho has acquired conservation easements totaling approximately \$55 million, and the program is an important component of the state's strategy for protecting and promoting private forestlands, as recognized in the Forest Action Plan. Continued investments in the program may help the state to grow the program, engage private forestland owners in keeping forests in production, and monitor conservation easements to ensure ongoing public benefits are realized.

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Introduction

Private forestlands provide timber, hunting and recreation access, wildlife habitat, and other values important to Idaho residents. Nearly 3 million acres of Idaho's 22 million acres of forestlands are privately owned, either as industrial or non-industrial family forestlands.¹ These forests provide a significant portion of Idaho's timber production, often accounting for more than half of the state's timber production annually over the past 30 years. These same private forestlands are at risk of changing land use as the state's population grows and landowner objectives change. The conversion of these working forests to residential housing subdivisions or commercial uses decreases timber production and public benefits, potentially impacting Idaho's rural landscapes and communities.

Conservation easements provide a means to set aside private forestlands to ensure that they continue producing timber and diverse public benefits. A conservation easement is a voluntary, legally binding agreement between a landowner and designated third party, such as a land trust or government agency, whereby mutually agreed upon development rights are permanently foregone. Conservation easements that conserve working forestlands in Idaho are funded through the federal Forest Legacy Program (FLP). Nationally, the FLP is administered by the USDA Forest Service, with an overarching goal of protecting timber producing, environmentally significant, private forestlands from conversion to non-forest uses. Idaho began participating in the FLP in 2002 with administrative responsibility held by the Idaho Department of Lands (IDL).

Project Purpose

This analysis provides an overview of the FLP, a description of how the program operates in Idaho, responsibilities and financial obligations of the state, a summary of existing projects, and identification of emerging issues that may affect program implementation. Recommendations are provided for ensuring that local stakeholders, local communities, and the public's interest are served by the program. The contents of this report are based on a review of FLP policies at the national and state level, compilation of data on existing FLP projects, interviews with state and federal FLP managers, and interviews with local participating FLP project sponsors. These findings were reviewed by the Idaho Department of Lands, a county commissioner, and an employee of a land trust for accuracy and objectivity.

¹ Witt, C., J.D. Shaw, M.T. Thompson, S.A. Goeking, J. Menlove, M.C. Amacher, T.A. Morgan, and C. Werstak, *Idaho Forest Resources, 2004-2009, 2012*, USDA Forest Service, Rocky Mountain Research Station, Resource Bulletin RMRS-RB-14. https://www.fs.fed.us/rm/pubs/rmrs_rb014.pdf

Forest Legacy Program Overview

Established by the United States Congress in the 1990 Farm Bill (16 U.S.C. 2103c),² the FLP is a competitive national funding program operating in 50 states and 3 territories. The FLP is funded through the federal Land and Water Conservation Fund (LWCF) that receives nearly all of its funding through royalty payments from offshore oil and gas leasing.³ The USDA Forest Service administers the program allowing participating states to apply annually to a request for project proposals. Implementation and focus of the FLP goals differ by state, but the overall purpose is to protect private forestlands from being converted to non-forest uses through voluntary fee simple purchase of conservation easements (**Table 1**). To date, no state funds have been used for the purchase of conservation easements on any FLP project.

FLP funding may cover up to 75% of total project costs associated with acquiring a conservation easement, with a maximum of \$7 million per project.⁴ FLP funds may not be used for monitoring or stewardship costs. States may receive up to \$10 million annually regardless of the number of projects. The required 25% matching funds must come from non-federal sources, such as state, local, or private entities. Often these contributions are made by private landowners as donations of a portion of the value of the easement. On average the national FLP receives approximately 70 applications per year and authorizes funding for 10-15 of the highest ranked projects.

Idaho's Forest Legacy Program

Idaho began participating in the FLP in 2002 when the Idaho legislature authorized IDL to receive federal grants to purchase conservation easements that retire and transfer development rights on privately owned forestlands to the state. The state holds and monitors the conservation easement for compliance with the terms of the contract, but the state cannot sell or exercise the development rights in the future. Participation in the FLP is entirely voluntary operating on the "willing buyer, willing seller" principle. IDL manages the FLP in accordance with Idaho Forest Action Plan guidelines so that projects meet state goals as well as FLP federal criteria, providing feedback and vetting of project applications, and managing and monitoring conservation easements after projects are finalized.

² USDA Forest Service, *Forest Legacy Program Implementation Guidelines*, 2011.
https://www.fs.fed.us/cooperativeforestry/library/flp_guidelines.pdf

³ Vincent, C., *Land and Water Conservation Fund: Overview, Funding History, and Issues*. Congressional Research Service, 2014.
<https://www.nrpa.org/uploadedFiles/nrpa.org/Advocacy/Resources/LWCF%20CRS%20Report%202014.pdf>

⁴ Ibid.

Table 1: FLP National Criteria and Idaho Goals

Forest Legacy Program Criteria:

At the national level, FLP projects are ranked and selected based on the extent to which the project meets the following criteria.⁵

- Importance – evaluates the economic, environmental and social importance of the project. This includes the presence of threatened or endangered species, public access, aesthetic values, water quality enhancement, and cultural values.
- Threatened – must demonstrate that development pressure would likely convert working forests to non-forest uses.
- Strategic – fits into larger efforts to create connectivity, public access, and continuity of working forests across landscapes.

Idaho Goals:

The state's goals for FLP as identified in the Idaho Forest Action Plan include:

- identifying high priority forestlands;
- maintaining the cultural and economic stability of rural communities by conserving working forest landscapes;
- enhancing water quality;
- maintaining unique forest habitats;
- protecting and providing habitat for native fish, wildlife and plants; and
- protecting social values that forests provide such as public recreation, scenic, cultural and historical values.⁶

Before applying to the national program for funding, applicants must first submit proposals to IDL for consideration and conformity with the Idaho Forest Action Plan. **Figure 1** characterizes the four major steps involved in selecting and funding FLP projects in Idaho and the typical timeline to completion.

Project Initiation

FLP projects are typically initiated by a landowner who contacts a project sponsor, such as a local land trust, to discuss options for establishing a conservation easement on their property. In some instances, the project sponsor may reach out to landowners to explore a conservation easement for working forestlands that are potentially threatened by development or have a strategic conservation value (e.g., public access, habitat connectivity, or watershed protection).





⁵ USDA Forest Service, *Forest Legacy Program: Project Scoring Guidance*, 2012.

http://dnr.wi.gov/topic/ForestPlanning/documents/FLP_ProjectScoringGuidance.pdf

⁶ Idaho Department of Lands, *Idaho Forest Legacy Program*, 2017. <https://www.idl.idaho.gov/forestry/forest-legacy/more-forest-legacy.pdf>

Idaho's Forest Legacy Program

Figure 1. FLP Approval Process

Project Phase	Actions	Estimated Time
 Initiation	<ul style="list-style-type: none"> • Land owner and project sponsor identify a potential project area • Assess risk of development • Inventory project values • Perform pre-appraisal • Negotiate initial conservation easement terms 	Six months to one year
 IDL Application	<ul style="list-style-type: none"> • Submit project application to IDL • IDL assesses projects for eligibility and quality • Idaho Lands Resource Coordinating Council reviews and ranks all FLP applications • IDL submits project to USDA Forest Service 	Three to six months
 FLP Review/Selection	<ul style="list-style-type: none"> • Projects ranked and selected at the regional level • Projects ranked by a national committee • LWCF budget is allocated to top projects until all funds are allocated 	Six months
 Transfer/Finalize	<ul style="list-style-type: none"> • IDL and USDA Forest Service review final project appraisal • Idaho State Board of Land Commissioners authorizes state's purchase of conservation easement • USDA Forest Service transfers funds to complete acquisition transaction • Conservation easement transferred to IDL • Project monitoring begins the following year 	Six months to one year

Once a potential project is identified, the landowner and project sponsor work together to determine if the project fits the state and national FLP criteria, and if so, most landowners will then acquire a pre-appraisal of the estimated value of the land with restricted development rights. This information assists landowners and project sponsors in drafting the terms of the conservation easement. The landowner and project sponsor will typically also begin working with neighbors, county officials, and other local groups to identify concerns and solicit project ideas and support. Proposals with strong local support typically have a better chance of being selected.

Another determinant of project success is the ability of landowners to pay upfront costs associated with application preparation, pre-project appraisal, associated legal fees, cost-share commitments, mineral surveys, and a title report. Total project initiation expenses often exceed \$10,000 without guarantee a project will be approved. Also important is the landowner's ability to make a matching contribution of 25% or more of the value of the project. This contribution can be made in the form of a donation of funds and/or a portion of the easement value, which may qualify as a charitable donation that reduces the landowner's federal income tax liability. A landowner must also consider the potential value of foregone development rights, which may exceed the reduction in tax liability and other benefits received.

Idaho's Forest Legacy Program

IDL Application

Once a full project proposal has been submitted to IDL, it is reviewed by program staff to determine project eligibility.⁷ IDL may work with the landowner, project sponsors and local government officials to request additional information, or recommend changes to strengthen project goals. This step also provides an opportunity to reject projects deemed non-beneficial to the state or local communities. Typically the Idaho FLP receives fewer than five applications per year. All eligible projects are submitted to the Idaho Lands Resource Coordinating Council (ILRCC) for review and ranking according to national FLP criteria and in accordance with state goals and objectives. The highest ranking projects are then sent to the USDA Forest Service for review.⁸

FLP Review

All proposed Idaho projects are ranked with other FLP applications in the Western region (AK, AZ, CA, CO, ID, KS, MT, ND, NE, NM, NV, OR, SD, UT, WA, WY, Guam, American Samoa, Federated State of Micronesia, US Pacific Islands Territories) before being submitted to a national committee. The national committee reviews and ranks all proposals from all regions (Northeastern, Southeastern, Western regions) and submits a ranked list of project proposals to the U.S. Congress as part of the President's budget. Funding from the LWCF is then appropriated to the top projects (may be full or partial funding) until all program funds are allocated.⁹ Because FLP funds are limited, only a small portion of projects exhibiting the greatest public benefit are approved.

*Finalize Projects*¹⁰

Awarded projects, selected for funding through the FLP review process, require a final appraisal of the property value. A qualified third-party review of the appraisal is then completed and approved by the USDA Forest Service and IDL. In addition, IDL requires that a forest stewardship plan be developed and approved prior to completion of the conservation easement. The forest stewardship plan includes a set of objectives, responsibilities and actions that will be taken to manage, maintain and enhance the landowner's forest resources. The stewardship plan can be revised by the landowner and IDL to accommodate changing forest management needs over time.

⁷ Idaho Department of Lands, *Idaho Forest Action Plan: Part 2 Resource Strategy*, 2015. https://www.idl.idaho.gov/forestry/Forest-Action/2015_idaho_fap_part-2_strategy.pdf

⁸ Ibid.

⁹ This process changed in 2016 with newly released FLP procedures.

¹⁰ Ibid.

Idaho's Forest Legacy Program

Prior to 2017, federal acquisition funds were transferred to the state of Idaho for legislative approval before to being made available for purchase of the conservation easement. Beginning in 2017, IDL submits a request to the USDA Forest Service to transfer acquisition funds to a title company. The title company then distributes funds to the landowner to finalize the conservation easement acquisition.

The landowner maintains responsibility for managing forestlands according to terms of the conservation easement, which is a legally-binding contract for allowable activities on that land. Local and state taxes are still assessed on the property and must be paid by the landowner.¹¹ Generally, working forestlands remain in the same tax category once designated as an FLP conservation easement, and the tax assessment remains because the land use remains static with foregone right to development.

Perpetual Conservation Easement Responsibilities

IDL is responsible for annual monitoring of the conservation easement property to ensure compliance with the contract provisions, assure that promised public benefits are provided, and to maintain positive landowner relationships. This requires small but recurring annual costs for monitoring site visits, writing monitoring reports, and responding to landowner inquiries. IDL uses a model known as a stewardship fund where landowners enrolled in a FLP project provide the state a one-time, lump sum payment to be used as a principal investment. The interest earned is used to pay for monitoring and easement management costs incurred by IDL. Participants in our interviews noted that as more projects are added, the resources available to perform the responsibilities associated with holding a conservation easement, including project monitoring, are being stretched. A legal challenge or other unexpected costs associated with a violation of the terms of the contract would also need to be covered by stewardship funds, further stressing available resources. In order to maintain the state's obligations assigned through the conservation easement, the state will either need to request more for the stewardship fund or procure additional financial resources from elsewhere.

Idaho FLP Projects

Idaho has enrolled approximately 90,000 acres to date across 10 project areas (**Table 2**).¹² These lands remain in timber production while providing benefits such as hunting access,

¹¹ Idaho Department of Lands, *Idaho FLP FAQ*, 2011. <https://www.idl.idaho.gov/forestry/forest-legacy/faq-2011.pdf>

¹² United States Department of Agriculture, *The Forest Legacy Program: 25 Years of Keeping Working Forests Working*, 2015. <http://blogs.usda.gov/2015/04/17/the-forest-legacy-program-25-years-of-keeping-working-forests-working/>

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Table 2: Idaho FLP Projects

Project Name	Date	Acres	FLP funding	Match Funding	Landowner Type	Project Sponsor	Public Recreation Access
St. Joe (1)	2003	2,710	\$497,000	\$166,000	Industrial (REIT)	The Trust for Public Land	Yes
St. Joe (2)	2004	23,150	\$3,457,000	\$1,132,636	Industrial	The Trust for Public Land	Yes
St. Joe (3)	2005	28,753	\$3,451,000	\$1,215,675	Industrial	The Trust for Public Land	Yes
Singleton	2006	560	\$641,000	\$209,000	Family Forest Landowner	Teton Regional Land Trust	No
Clifty View	2007	1,643	\$2,900,000	\$2,400,000	Family Forest Landowner	Vital Ground Foundation	No
Gold Creek (1)	2009	400	\$1,552,800	\$517,680	Family Forest Landowner	Clark-Fork Pend Oreille Conservancy	No
Gold Creek (2)	2010	243	\$740,200	\$506,571	Family Forest Landowner	Kaniksu Land Trust	No
Trow Creek	2009	369	\$15,000	\$825,000	Family Forest Landowner	Rocky Mountain Elk Foundation	No
McArthur Lake WC (1)	2010	3,943	\$3,215,485	\$1,031,967	Industrial (TIMO)	The Nature Conservancy	Yes
Bane Creek	2011	723	\$1,862,091	\$620,697	Family Forest Landowners	The Nature Conservancy	No
Shearer	2012	112	\$15,000	\$261,184	Family Forest Landowner	The Nature Conservancy	No
Kubiak/Sherwood	2012	143	\$18,000	\$927,500	Family Forest Landowner	Kaniksu Land Trust	Yes
Neuman Big Meadows	2012	49	\$9,380	\$133,000	Family Forest Landowner	Palouse Land Trust	No
McArthur Lake Addition (2)	2014	6,847	\$4,095,000	\$1,600,000	Industrial	The Trust for Public Land	Yes
Boundary Connections	2016	1,459	\$2,054,884	\$684,963	Family Forest Landowner	The Nature Conservancy	No
McArthur Lake East (3)	2016	5,548	\$3,594,716	\$2,336,615	Industrial (TIMO)	The Nature Conservancy; Fish and Game	Yes
Clagstone	2016	14,432	\$5,500,000	\$7,600,000	Industrial	The Trust for Public Land; Fish and Game	Yes
Totals for completed projects		91,083	\$33,618,556	\$22,168,487			
Pending Projects							
ME-Hancock	2014	2,520	\$1,630,284	\$547,000	Industrial (TIMO)	The Nature Conservancy	Yes
Hall Mountain (1)	2015	1,256	\$2,700,000	\$990,000	Industrial and Family Forest	The Nature Conservancy	Partial access
Hall Mt./Kootenai Valley (2)	2016	3,281	\$3,300,000	\$1,100,000	Industrial and Family Forest	The Nature Conservancy	Partial access
Total Pending		7,057	\$7,630,284	\$2,637,000			

other recreational opportunities, watershed protection, and wildlife habitat. With the exception of the Singleton project in Clark County, FLP projects are located in Boundary and Bonner counties in the panhandle of northern Idaho, where forest products are a particularly important part of the economy.

Due to national FLP funding limitations, large projects may be divided and phased across multiple years. Phasing increases project complexity and often requires greater upfront financial commitments from landowners. The McArthur Lake projects in Boundary and Bonner counties are a good example, as they were developed as three successive projects spanning five years each with different landowners and project partners with a total investment of \$12 million in FLP funding. In aggregate, the three McArthur Lake projects conserve nearly 20,000 acres of working forest, connect to an existing Idaho Department of Fish and Game Wildlife Management Area, and provide open public access for hunting, fishing, and trapping.

FLP projects in Idaho represent a mix of industrial and family forestlands. Several of the large-acreage projects were developed in conjunction with timber companies, timberland investment management organizations (TIMOs), or real estate investment trusts (REITs) (**Figure 2**). The large-acreage projects, often backed by industrial landowners, can more easily afford the high upfront costs associated with project development.

Figure 2: Defining TIMOs and REITs

TIMOs and REITs
<p>What is a Timberland Investment Management Organization (TIMO)?</p> <p>TIMOs serve the purpose of managing timberland assets to produce returns for their clients. In some cases the primary profitable use of land is to sell it for development. Conservation easements provide an alternative revenue-generating option. A TIMO can sell development rights, generating revenue for the landowner, while still maintaining a working forest that continues to provide revenue returns. Molpus Woodlands Group is an example of a TIMO with lands enrolled in the FLP in Idaho.</p>
<p>What is a Timber Real Estate Investment Trust (REIT)?</p> <p>REITS are publicly traded firms that own and manage timberlands for the purpose of producing timber. Revenues from timber production are distributed to shareholders as dividends. Potlatch Corporation is an example of a REIT with lands enrolled in the FLP in Idaho.</p>

Idaho's Forest Legacy Program

IDL's portfolio of projects also includes smaller parcels of non-industrial forestlands owned by individuals or families. These projects typically include several small individually-owned parcels. The ability to pool parcels is important for making participation in the FLP an option for landowners who may otherwise not be able to participate due to financial constraints or because of the limited nature of the public benefits received from individual small parcels. For example, the Bane Creek Neighbors project in Boundary County combined three family properties to conserve a contiguous tract of forestland connecting grizzly bear recovery zones in the Selkirk and Purcell mountain ranges. Multi-owner projects offer opportunities for maintaining working forests in areas that still have forest cover but are at higher risk of development because land has already been subdivided. The public benefits of combined projects can be significant, but they are not without costs. Project complexity and coordination becomes more of an issue, as do transaction costs; a 50-acre easement takes about the same amount of effort and staff time to complete as a 5,000-acre easement. Combined projects require greater coordination and stronger commitments from landowners, project sponsors, and IDL.

Emerging Issues and Recommendations

State Spending on FLP

The USDA Forest Service grants approximately \$40,000 per year to IDL to help administer FLP in Idaho. In 15 years of operation the state has acquired approximately \$55 million in conservation easement assets. Another approximately \$10 million in conservation easement assets have been approved by the FLP national committee and are currently under consideration by the state. Ongoing monitoring by IDL will be required to ensure existing conservation easements continue to provide their stated benefits. These monitoring activities will require sufficient funding. There is some concern that the one-time, lump-sum payments by property owners into the stewardship fund will be insufficient to cover recurring monitoring costs. Interview respondents generally agreed that if the program was to expand any further, increased funding would be needed to support up to one FTE to manage the existing FLP portfolio and add new projects. Without additional funding, from the stewardship fund or another source, the number of new projects is likely to decrease and the time it takes to complete existing projects will increase. For example, IDL did not accept project applications in 2015 and 2016 because the agency is still working on previously-funded projects awarded in prior years.

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Local Property Taxes

There is concern among county officials that permanently foregoing development on private property constrains future economic growth by reducing future taxes that could be generated from those developed properties. While a FLP conservation easement does not *change* the property's current tax category, enrollment in FLP prevents future changes that could be taxed at a different and potentially higher rate. Lands enrolled in FLP are most likely taxed as forestland—under either the productivity or bare land and yield tax options—and would continue to be so. A related concern is that the value of neighboring properties could be affected by a landowner's ability to develop their own property as a result of undeveloped neighboring land. The concern was shared that this could decrease development opportunities, but it could also increase neighboring property values by ensuring open space and public access. No information is available about conservation easements affect neighboring property values.

Proponents of conservation easements urge weighing the social and economic costs of losing production from working forestland, public access and recreation, tourism, wildlife, and aesthetic values against the potential for increased tax revenues.

Program Oversight and Guidance

IDL activities related to the administration and implementation of Idaho's FLP are reported to the USDA Forest Service and the Idaho State Forester's office on an annual basis. Additional reviews of individual projects are performed by the Idaho Lands Resource Coordinating Council, which makes project recommendations to the State Forester. The goals and objectives that guide IDL's implementation of the FLP are derived from the Idaho Forest Action Plan,¹³ the overarching guidance document that directs and focuses all state service forestry and forest stewardship projects administered by IDL under USDA Forest Service State and Private Forestry programs.

¹³ Idaho Department of Lands, *Idaho Forest Action Plan: Part 2 Resource Strategy*, 2015. https://www.idl.idaho.gov/forestry/Forest-Action/2015_idaho_fap_part-2_strategy.pdf

Conclusions

The FLP in Idaho provides an opportunity to conserve productive private forestlands from future development while providing local, public, and environmental benefits. Enrollment in the FLP is entirely voluntary. The landowner agrees to forego future development in perpetuity, and those restrictions to the title remain on future landowners. While the conservation easement does not change the property's current tax assessment, enrollment in FLP prevents future changes that could be taxed at a different and potentially higher rate. IDL has acquired approximately \$55 million of conservation easements totaling more than 90,000 acres through the FLP.

Current funding generated through one-time landowner contributions may be insufficient to meet future administrative needs if the program were to expand. This would jeopardize current monitoring and reduce future program enrollment. A modest increase in funding to match landowner contributions would support the goal of keeping working forests working. FLP grants fund opportunities for private landowners, conservation partners and the state to maintain forestlands that support natural resource economies and sustainable land use in Idaho.