Conservation Organization Guide to Completing and Closing Forest Legacy Conservation Restrictions held by Massachusetts Municipalities

This document is meant to provide guidance on the requirements for completing and closing a typical Forest Legacy tract. It is divided into two sections: (1) Basic guidelines for a Forest Legacy project, and (2) Steps to follow for closing an individual tract. The steps in Section 2 are written in chronological order, however many of the steps should be happening concurrently in order to complete the project before the grant deadline. Be sure to review these steps with the Forest Legacy Program (FLP) Coordinator before you begin to close a funded project/tract to determine if there are any updates or changes to either this Guide or FLP requirements.

SECTION 1: Basic Guidelines for a Forest Legacy Project

In a multi-tract project, close donation parcels and parcels with large bargain sales first so that you've banked a large amount of cost-share. This demonstrates the reliability of the project proponents in securing the required amount of cost-share and justifies the Forest Service to release the funds to reimburse due diligence expenses before the entire multi-tract project is completed. If your project involves multiple tracts to be held by a single municipality, complete those tracts together so that you avoid going back to the municipality again and again.

Forest Legacy grants can reimburse much of the due diligence expenses relating to a tract, provided those expenses are identified in the Grant Award budget. However, Forest Legacy will only reimburse due diligence expenses that occur <u>after</u> MA DCR has received the Grant Award from the USFS, the state has entered into a contract with the Partner, and the Partner has received notification to proceed (Notice to Proceed) from MA DCR. In addition, cost-share expenses can only be applied during the life of the grant (two years). If the project is not completed in that time, MA DCR can request an extension to the grant (in 6 month intervals). This request must be made at least 30 days prior to the grant expiration date.

Before beginning due diligence work and expending any funds, obtain a signed **Agreement** between the landowner and the conservation organization that commits the landowner to conserving the land based on a percentage of the appraised value obtained by the Yellow Book – certified appraiser. You should also complete a **Municipal Due Diligence Memorandum of Agreement** with the municipal conservation commission that will hold the conservation restriction. This agreement gives permission to the land trust to handle the due diligence components of the project on behalf of the town. The Forest Legacy Program Coordinator should review and approve this document before you proceed further.

The landowner will also need to complete a **W-9** tax form. This form must be sent to MA DCR (ask for the name and mailing address, do not send to FLP Coordinator) no less than 2 months prior to closing to ensure that the Forest Legacy funds can be processed in time.

All documents described below in Section 2 "Steps for Closing an Individual Tract" must be reviewed by MA DCR and US Forest Service Forest Legacy Program Staff. If any changes are made to a document after the initial review, it must be resubmitted for review and approval. Any amendments or changes to the overall project/tracts such as the addition of new tracts, the replacement of original tracts with new tracts, a switch from CR to Fee or Fee to CR, or changes in acreage, or public access will require MA Forest Legacy Committee, State Forester, and USFS approval. Such changes will require the submission of a revised Project Grant Narrative and Budget to the USFS from the FLP Coordinator.

Additional tips to remember as you work through a project:

- Before appraisal work can begin, the USFS must complete a Due Diligence Review of the following documents: completed title work, draft CR, a map with legal description of the property, and a mineral rights determination letter (only in cases where rights have been severed). When the USFS has approved these documents, they will communicate that to the state. The FLP Coordinator will then forward these documents to the Review Appraiser. Only after they receive these documents can the Review Appraiser begin developing the Task Assignment Summary.
- The FLP Coordinator will provide Partners with a Project Workbook to be used to track project budget and expenses. <u>The Project Workbook must be kept up-to-date</u>. Each time there is a change to the overall project or an individual tract, you must request that the Project Partner update the Project Workbook and submit it to the FLP Coordinator.
    a. Project components that must be updated include the addition of new tracts, the replacement of original tracts with new tracts, a switch from CR to Fee or Fee to CR, or changes in acreage, public access, and budget.
- The up-to-date Project Workbook and a Zero Balance Invoice from each contractor that worked on a tract must be submitted with all requests for reimbursement of due diligence expenses and documentation of cost-share contributions.
- A contract with MA DCR and Notice to Proceed are required before expenses can be incurred and considered for reimbursement.
- For all due diligence work being contracted and paid for with FLP funds, a copy of the contract and notice to proceed should be provided to the FLP Coordinator.
- Acreage amount must be consistent in all documentation, including Title Report, Certificate of Title, Conservation Restriction, Survey, Forest Stewardship Plan, Yellow Book Appraisal, Yellow Book Appraisal Review, Baseline Documentation Report, Landowner Letter, and the Monitoring Commitment Letter or MOA. The recommended format is a whole number followed by either "+/-", or "more or less" (i.e. 23 +/- acres or 23 acres, more or less).
- Contracts and due diligence documents must be signed in blue ink.
- Before closing/recording the FLP Coordinator must receive hard copies of all documents. <u>Preliminary, draft, or unsigned documents are not acceptable</u>.
    a. The following documents must be submitted with original signatures: Appraisal, Appraisal Review, Landowner Letter, Baseline, and Monitoring Commitment Letter or MOA.
- Throughout the length of the grant, MA DCR is required to submit quarterly and annual reports to the US Forest Service to outline the progress of the project. Quarter end dates are: March 31, June 30, September 30, and December 31.
    a. The Project Workbook is used to report to the US Forest Service. At least two weeks before the end of the quarter, Partners must make certain that all information in the Project Workbook is correct to ensure accuracy of the Quarterly and Annual reports. At this time, Partners must send an email with up-to-date Project Workbook to FLP Coordinator to notify if changes have been made or confirm accuracy of the information in the Project Workbook.
    b. If possible, do not set up closings during the last two weeks of a quarter. If a tract closing must occur during this time, make sure documentation is submitted to FLP Coordinator immediately afterward and have all necessary updates made to the Project Workbook to be included in the Quarterly Report.
    c. The most difficult times to close/record a Tract are the months of June and December. Please plan closings/recordings accordingly.

SECTION 2: Steps for Closing an Individual Tract
Use this section of the guide in conjunction with the Conservation Restriction Checklist. Each time an item is completed, update the checklist with the dates it was ordered and completed and email both the item and the updated checklist to the FLP Coordinator. The FLP Coordinator will enter Date Submitted and Date Approved and return the checklist to the Partner. ***Note:*** *Do not start a new checklist each time an item is completed; the checklist is a tracking tool for each tract and is cumulative.*

BEFORE CLOSING/RECORDING (the USFS will not authorize the release of acquisition funds until each of these steps has been completed).

1. Partners and/or Municipalities must obtain a **State Contract** and be in receipt of a **Notice to Proceed** before expenses can be incurred and considered for reimbursement.

2. Order and complete a title examination. Send **Title Report** (from the title company) and **Certificate of Title** (issued by the title company's attorney) to FLP Coordinator for review. Include a copy of any documents referenced in the Title work.
    a. The title examination must be done in compliance with State EEA title specifications. Title specifications are available on the MA DCR Forest Legacy Program website.
    b. Title Report and Certificate of Title must include a "Minerals Determination" (have any mineral rights been severed? i.e. oil, gas, coal, water, etc…).
    c. Any defects in the title that will prohibit acquisition by FLP must be cleared before appraisal work can begin. If title defects include boundary line or acreage uncertainty, a survey may be necessary (see #7 below).
    d. The title examination must be completed before appraisal work can begin.

3. Order **Title Insurance** for the CR. A **Title Insurance Commitment Letter** (a notice by the title insurer that they will indeed insure the track after closing) must be written in the name of the title holder (municipality). Send to FLP Coordinator for review.
    a. Title Insurance Policy must be issued to the CR title holder (not the landowner).
    b. A copy of any documents referenced in the Title Insurance or Commitment Letter must also be submitted to the FLP Coordinator.
    c. The Title Insurance Commitment Letter is one of the documents that must be submitted to the US Forest Service to request the release of funds for acquisition (once the tract closes, it is replaced by the issuance of a final Title Insurance Policy). With this in mind, the effective date of the Title Insurance Commitment Letter should be as close to the date of closing as possible.
    d. Full donation tracts of land are required to have title insurance.
    e. Consider including an "Inflation Clause" in the Title Insurance Policy to provide long term protection for land value inflation over time.

4. If the property has a mortgage, secure **Mortgage Subordination** from the mortgage lender.
   Note: This can occur at the time of closing / recording.

5. Complete **Draft CR,** using USFS approved Template**.** Highlight any deviations from the Forest Legacy Standard Conservation Restriction template using the "track changes" function in Microsoft Word. Finalize exclusion areas. Send Final Draft CR to FLP Coordinator for review.
    a. Exclusions reserved for the purpose of future development (i.e. ANR lot or to be sub-divided) need survey (plan) and permanent monuments.
    b. Exclusions around a residence typically require a survey unless the exclusion area is demarcated clearly by stone walls or other permanent monumentation (see #7 below).

c. If any changes are made to the CR after initial review, the CR must be resubmitted to FLP Coordinator for final review and approval by the USFS.
d. Final Draft CR must be completed before appraisal work can begin. If changes are made to the CR after the Yellow Book Appraisal and Yellow Book Appraisal Review are completed, the final, approved CR must be forwarded to the Appraiser and Review Appraiser for examination to determine if a Supplemental Appraisal, Appraisal Letter, or new Appraisal Report is required.

6. Order and complete **Yellow Book Appraisal** and **Yellow Book Appraisal Review** as follows: **Note:** Additional FLP Appraisal information is posted on the MA DCR Forest Legacy Program website.
    a. Before beginning any appraisal work, the following items must be submitted to the FLP Coordinator:
        i. The completed title work, including Certificate of Title and Title Report,
        ii. Final draft CR with legal description of property and any exclusion areas. Follow the process below to submit the final draft CR:
            1. Project Partner should download the approved CR template from the MA DCR Forest Legacy Program website. Any tract specific changes should be made to the document using "track changes" mode.
            2. When finished, the draft CR should be sent to the FLP Coordinator for review. If "track changes" was not used to edit the CR, it will be returned to the Partner with request for "track changes" version. The FLP Coordinator will send any comments/concerns back to the Partner.
            3. After addressing comments, the Partner will send the CR to the EEA CR Reviewer for review.
            4. The FLP Coordinator will follow-up with the EEA CR Reviewer to remind the reviewer of the agreed upon template language.
            5. Once the CR is approved by the EEA CR Reviewer, it will be considered final draft and will be resubmitted to the FLP Coordinator.
        iii. A map with boundaries and any exclusion areas matching the CRs legal description. The map must show physical features and GPS waypoints at corners or metes and bounds description (i.e. stone walls, wire fences, stakes, stones, iron pins, etc.).
        iv. Any other documentation, such as surveys, maps, Deeds, Forest Stewardship Plans, or Management Plans which will assist the Review Appraiser in the development of the Task Assignment, should also be submitted to the FLP Coordinator.
        NOTE: If necessary, up to 3 appraisal scenarios can be included if final negotiation on land to be conveyed has yet to be agreed upon.
    b. When the FLP Coordinator has all of the above items, they will be submitted to the US Forest Service for review. The Forest Service will schedule a Pre-Request for Appraisal Services Conference Call with the Partner, Federal Review Appraiser, and FLP Coordinator to review the due diligence documents (see "Pre-RFAS Teleconference – Desired Information" document available on the MA DCR Forest Legacy Program website).
    c. Once the preliminary documents have been approved by the USFS, the Review Appraiser will develop the Task Assignment.
    d. The Commonwealth will contract with a qualified Yellow Book Appraiser.
        i. The Commonwealth will ensure compliance with USPAP throughout the appraisal process.
        ii. Documentation of Appraiser's qualifications will be maintained in the office of the FLP Coordinator.
        iii. The Review Appraiser will provide and review the Task Assignment with the contract Appraiser prior to the start of the appraisal.

    iv. The qualifications of the Appraiser and the Task Assignment will be included in the final Appraisal Report.

e. After the Appraiser has been contracted, a site visit with the Appraiser, Federal Review Appraiser, Tract Partner, and Landowner, will be scheduled to review the tract.
    i. The Landowner Permission Form should be signed and submitted to the FLP Coordinator and Appraiser before the site visit.

f. Any changes to conditions of the property being appraised subsequent to the task assignment summary being submitted to the Appraiser must be submitted to the FLP Coordinator. The FLP Coordinator will then forward the changes to the Review Appraiser for examination and determination of any effect such changes have on the appraisal assignment.

g. <u>Full Donation</u>: For a CR full donation (no FLP funds used for the acquisition), the Appraisal does not need to be to Yellow Book specifications, but must conform to USPAP specifications.
    i. A Review Appraiser / Appraisal Review Report is not needed for a full donation tract.
    ii. Appraisal work for a full donation tract cannot be reimbursed with Forest Legacy Funds, nor can it count towards project cost share.
    iii. The Appraisal cannot be contracted by the landowner, nor can they be listed as a Client or Intended User.
    iv. The Commonwealth of Massachusetts and US Forest Service must be listed as both the Clients and Intended Users. The Land Trust/NGO and Municipality may also be listed as an intended user.
    v. Full Donation Appraisals must be completed according to EEA Appraisal Specifications. EEA Appraisal specifications are available on the MA DCR Forest Legacy Program website.

h. If the landowner is claiming a charitable contribution for IRS purposes on the donated value of a conservation restriction (bargain sale or full donation), the landowner must order a separate independent appraisal – sometimes known as a 170(h) appraisal or an IRS appraisal. The expense of this appraisal is not reimbursable with Forest Legacy funds, nor can it count towards cost share.
    i. The same Appraiser cannot be used for both the IRS Appraisal and the Appraisal Report used for Forest Legacy purposes.

7. Conduct S**urvey(s)** as necessary to address exclusions negotiated in the CR and any Title Examination recommendations of boundary issues. Send to FLP Coordinator for review.
    a. If physical features defining an exclusion area exist (stone walls, fence, barbed wire) then contact FLP Coordinator to discuss whether or not a survey is needed.
    b. All survey work must be done in compliance with EEA survey specifications. Survey specifications are available on the MA DCR Forest Legacy Program website.

8. Order and complete the **Forest Stewardship Plan** (FSP) to FLP Specifications. Send FSP to FLP Coordinator for review.
    a. The Consulting Forester should review the draft CR to ensure the plan is written in compliance with the terms of the CR.
    b. The FSP must specifically reference the Forest Legacy Program. This can be done in the FSP History section under remarks on the front page of the plan, or in the FSP Property Overview, Regional Significance, and Management Summary page.
    c. The FSP must reference the final NRCS Farm Plan (see #9 below) and other areas in the conservation project considered by Forest Legacy to be "compatible non-forest uses" (up to 25% of a Forest Legacy project can contain compatible non-forest uses, which includes cultivated farmland, pasture, grassland, shrubland, open water and wetlands).

   d. The final FSP (with all signatures including State Forester) must be submitted to the FLP Coordinator.

9. Order and complete an **NRCS Farm Conservation Plan** if the CR reserves agricultural rights (aka compatible non-forest uses). Send to FLP Coordinator for review.

10. Obtain a **State Contract** signed by the Municipality that contains the budgeted amount for acquisition expenses (and due diligence expenses if applicable). Work with the FLP Coordinator to obtain contract form. If Municipality is requesting the reimbursement of due diligence expenses a "State Contract" with MA DCR and "Notice to Proceed" are required before due diligence expenses can be incurred.
    a. The State Contract allows MA DCR to deposit Forest Legacy funds via Electronic Funds Transfer into a municipal account, to be drawn upon before closing/recording to issue the landowner check.
    b. If conservation of multiple tracts is occurring in the municipality, only one State Contract is necessary. The contract should include the total acquisition and due diligence (if applicable) expenses for all tracts.
    c. If the acquisition or due diligence expenses increase after the contract is signed, then an amended contract must be completed and signed.

11. Order and complete the draft **Baseline Documentation Report (BDR)**.
    a. The draft BDR (should include US Forest Service accepted draft Conservation Restriction) must be submitted to the FLP Coordinator for review and comments before closing can occur. The Draft BDR must be submitted electronically as a Word document.
    b. BDR must be written to Forest Legacy BDR specifications, which are posted on MA DCR Forest Legacy Program website.
    c. Submit NHESP Information Request Form to NHESP. Completed NHESP form must be included in the BDR.
    d. NHESP Information Request Form is posted on MA DCR Forest Legacy Program website.

12. Complete a **Landowner Letter** with signatures of CR Grantor (landowner) and CR Grantee (municipal conservation commission chair) and send to the FLP Coordinator.
    a. This letter acknowledges value of land as appraised, the agreed purchase price, that the transaction is voluntary, and that the landowner has no unrecorded agreements, loans, or instruments that would affect the property appraised.
    b. Landowner Letter must be on the official letterhead of title holder.
    c. Landowner Letter must include donation or bargain sale amount being applied as cost share.
    d. Landowner Letter is required for all tracts, including those that are full donations of land.
    e. Landowner Letter template is available on MA DCR Forest Legacy Program website.

13. Obtain a **Monitoring Commitment Letter** from municipal conservation commission or **MOA** from land trust or other third party monitoring organization and send to the FLP Coordinator.
    a. Letter must be on official letterhead of monitoring organization.
    b. Letter template available on MA DCR Forest Legacy Program website.

14. Submit the final **Shapefile** of the recorded CR to the FLP Coordinator.
    a. The shapefile must be the boundary of only the conservation restriction acres and not any excluded areas.
    b. The acreage of the shapefile must be within 5% of the recorded acreage in the CR.
    c. Shapefile at a minimum must include .shp, .dbf, .prj, and .shx files.

15. Report any tract information changes to the Project Partner Lead as they occur (including all expenses (acquisition, due diligence, and cost share), acres, stewardship plan approval date, etc.).
    a. Notify FLP Coordinator that updates have been made to the Project Workbook and submit updated Project Workbook to FLP Coordinator.
    b. At least two weeks before the end of each quarter (mid-March, mid-June, mid-September, and mid-December) double-check the Project Workbook to make sure all budget numbers are accurate. If any corrections need to be made, notify the Project Partner Lead and FLP Coordinator and submit updated Project Workbook to the FLP Coordinator.

16. Once the Forest Legacy Coordinator and USFS Forest Legacy Program Manager have reviewed and approved final versions of all due diligence documents (including final Municipal Due Diligence MOU, Title Report/Certificate, Title Insurance Commitment Letter, Forest Stewardship Plan, NRCS Farm Plan (if required), Appraisal, Appraisal Review, CR, State Contract, Landowner Letter, Monitoring Commitment Letter, and Baseline), then the FLP Coordinator will request **release of funds** from the USFS. ***Note:*** *The Grant Award provides the US Forest Service up to 90 days to review and respond to request. Plan for closings appropriately.*
    a. Determine if the landowner would prefer payment be made through an electronic funds transfer (EFT) or by check. Submit EFT paperwork if necessary.
    b. Once the municipality receives Forest Legacy funds, request that the municipality cut the **Landowner Check**, or EFT be made.

AT CLOSING/RECORDING:

17. Have the Closing Attorney complete **Title Rundown** and submit to the FLP Coordinator.
    a. This must be done at the Registry of Deeds before Recording occurs. The Title Rundown must confirm that from the date of the last Certificate of Title to the date of closing/recording no further liens, conveyances or encumbrances have been recorded.
    b. The FLP Coordinator will accept the Title Rundown in the form of an email from the attorney or as a Final Certificate of Title.

Record documents at the Registry of Deeds. Have the landowner **sign the Baseline Documentation Report.**

18. Make a **Copy of Landowner Check**, if check is being used. Have landowner sign and date the copied check. Send to the FLP Coordinator. If payments are in the form of an EFT (Electronic Funds Transfer) the FLP Coordinator will document payment with Vendor Web printout.

AFTER CLOSING/RECORDING (within 30 days):

19. Send a copy of the **recorded CR** to the FLP Coordinator or provide name of the Registry and Book and Page numbers.

20. Submit **Final Title Insurance Policy** to the FLP Coordinator.

21. Complete and submit the **Final Baseline Documentation Report** with all required signatures. Provide a hardcopy and CD/DVD of the report as specified in BDR specs.

22. Submit a **Press Article** that includes the mention of the Forest Legacy Program, MA Department of Conservation and Recreation, Bureau of Forestry as the "Lead Agency", and the US Forest Service.

This can be a single Press Article about the entire project or multiple articles, each about an individual tract or group of tracts. Alternatively, a **Sign** may be posted on the property as long as a **map** delineating the location of the sign (with coordinates) and a **photograph** of the posted sign is provided to the FLP Coordinator.

   a. This step is not required for full donations of land, but is recommended.

23. Submit a **Reimbursement Request Cover Letter** to the FLP Coordinator for reimbursement of due diligence expenses and to provide proof of cost share contributions.
    a. Submit separate Cover Letter and due diligence documentation for each Tract.
    b. Include the final Tract Spreadsheet from the Project Workbook with the reimbursement request.
    c. Include a **Zero Balance Invoice** from each contractor for every due diligence expense for which you are requesting reimbursement and/or cost share contribution. Invoices must be (1) on contractor's letterhead, (2) show the dollar amount charged for the work, and (3) state that the contractor was paid in full (zero balance remaining).
       i. If it is not possible to get a zero balance invoice, the original invoice and cancelled check will be accepted.
    d. Provide staff hourly time sheets and hourly wage information for both in-kind cost share contributions and reimbursements.
    e. These documents must be submitted no later than 30 days after closing/recording the tract.

24. Submit a **Single Paragraph Write-Up** to the FLP Coordinator. See MA DCR Forest Legacy Program website for examples.
    a. Submit write-ups for all tracts closed during a quarter one week before the end of that quarter (mid-March, mid-June, mid-September, and mid-December).

25. Finalize the **Project Workbook** to ensure acres and budget (expenses, reimbursements and cost share) are balanced and reconciled.

Conservation Restriction Checklist

For Massachusetts Tracts Funded by the Forest Legacy Program

Project Name: ________ Tract Name: ______________________ Tract Number: ____

Date Ordered[a]	Date Completed[b]	Date Submitted[c]	Date Approved[d]	**Due Diligence Items Required Before Closing/Recording** Refer to *Guide to Completing and Closing Forest Legacy CR* for important details
				1. Signed **Title Report** with **Certificate of Title**.
				2. Signed **Title Insurance Commitment Letter**.
				3. Signed **Mortgage Subordination** if necessary.
				4. Draft **Conservation Restriction.** Once approved by FLP Coordinator and MA DCS, obtain signatures.
				5a. Signed **Yellow Book Appraisal**.
				5b. Signed **Yellow Book Appraisal Review**.
				6. **Survey**(s) if necessary.
				7. Signed **Forest Stewardship Plan**.
				8. Signed **NRCS Farm Plan** if necessary.
				9. Signed **State Contract** between MA DCR and municipality. Obtain commitment from municipality to sign the contract at the beginning of the process.
				10. Draft **Baseline Documentation Report**. After closing, submit final Baseline with signatures and recorded conservation restriction.
				11. Signed **Landowner Letter**.
				12. Signed **Monitoring Commitment Letter**.
n/a				13. **Shapefile** of conservation restriction area (do not include any excluded areas).
				14. Update **Project Spreadsheet**.
			n/a	15. **Release of Funds**, **Check** to landowner issued by municipality.

[a] Date ordered from Contractor.
[b] Date completed by Contractor.
[c] To be completed by MA DCR Forest Legacy Program.
[d] To be completed by MA DCR Forest Legacy Program.
[e] Note: Title Rundown must be conducted at the closing prior to the recording by the Closing Attorney.

Conservation Restriction Checklist

For Massachusetts Tracts Funded by the Forest Legacy Program

Project Name: ________ Tract Name: _____________________ Tract Number: ____

Date Ordered[a]	Date Completed[b]	Date Submitted[c]	Date Approved[d]	**Due Diligence Items Required within 30 Days of Closing/Recording** Refer to *Guide to Completing and Closing Forest Legacy CR* for important details
				16. **Title Rundown**[e].
				17. **Copy of Landowner Check, Signed** by Landowner.
n/a	n/a			18. **Recorded CR**.
				19. **Final Title Insurance Policy**.
n/a				20. **Final Baseline Documentation Report**.
				21. **Press** and/or **Signage** to acknowledge the Forest Legacy Program, DCR and USFS.
n/a				22. **Zero Balance Invoices** and **Reimbursement Request Letter**.
n/a				23. **Single Paragraph Write-Up** for each tract.
n/a				24. Finalized **Project Spreadsheet**.

[a] Date ordered from Contractor.
[b] Date completed by Contractor.
[c] To be completed by MA DCR Forest Legacy Program.
[d] To be completed by MA DCR Forest Legacy Program.
[e] Note: Title Rundown must be conducted at the closing prior to the recording by the Closing Attorney.