



**U.S. Department of Agriculture**

**Office of Inspector General**

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# **Forest Service Forest Legacy Program**

**Audit Report 08601-56-SF  
April 2011**

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United States Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: April 20, 2011  
AUDIT

NUMBER: 08601-56-SF  
TO: Thomas L. Tidwell  
Chief  
Forest Service

ATTN: Donna M. Carmical  
Chief Financial Officer

FROM: Gil H. Harden /s/  
Assistant Inspector General  
for Audit

SUBJECT: Forest Service's Forest Legacy Program

This report presents the results of our review of Forest Service's (FS) Forest Legacy Program. FS' written response to the draft report is included at the end of the report, with excerpts and the Office of Inspector General's (OIG) position incorporated into the relevant sections of the report. Based on the written response, we have accepted FS' management decision for all the report recommendations, except for Recommendations 1, 3 and 4. We will be able to accept your management decision for the remaining recommendations when you provide us with additional information, as outlined in the OIG Position section of the report.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days, describing the corrective action taken or planned and the timeframe for completion of the recommendation for which management decision has not yet been reached. Please note that the regulation requires a management decision to be reached on all recommendations within a maximum of 6 months from report issuance. Follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the assistance your staff provided to our auditors during our review.

Attachment

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# Forest Service Forest Legacy Program

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## Executive Summary

The Office of Inspector General (OIG) evaluated the adequacy of Forest Service's (FS) controls over the Forest Legacy Program (FLP). The FLP is a Federal program that supports States' efforts to protect environmentally sensitive forest lands. States voluntarily participate in the program, which focuses on the acquisition of partial interests in privately owned forest lands through conservation easements. Conservation easements are legally binding agreements that transfer a negotiated set of property rights from the landowner to the State without removing the property from private ownership. Most FLP conservation easements restrict development, require sustainable forest practices, and protect other values.

In 2002, the Surveys and Investigations staff of the U.S. House of Representatives Committee on Appropriations conducted a review of the FLP and found that inadequate FS management and oversight of the FLP hampered the program's success. The review found that many national program policies were unclear which led to confusion in the field, particularly regarding project selection, cost sharing, appraisal reviews, easement negotiations, and monitoring. It also found that the FLP regional oversight structure was ill-equipped to manage the growth in project funding and State participation.

In response to the review, FS took a number of steps to improve its management and oversight of the FLP, including developing a national strategy for the FLP and updating the FLP Implementation Guidelines<sup>1</sup> to address issues such as cost sharing, appraiser qualifications, appraisal review policy, and conservation easement monitoring. FS also implemented the Forest Legacy Information System (FLIS), an electronic database used to store FLP project information and track program accomplishments. Although FS has taken significant steps to improve its overall administration of the FLP, our audit concluded that FS needed to take additional steps to further strengthen its controls over the FLP. Specifically, FS needs to (1) strengthen its oversight of the appraisal process, (2) ensure States meet the annual monitoring requirement, (3) strengthen controls over accounting and record keeping, and (4) standardize conservation easement agreements.

### *FS Needs to Strengthen Its Oversight of the Appraisal Process*

FS needs to strengthen its oversight over appraisals of land or interests in land donated to meet FLP cost-sharing requirements. For the States we visited, donated land or interests in land comprised almost one-third of the cost-sharing contributions provided by non-Federal sources. Because the amount of Federal funding can be contingent on the cost-sharing amount put up by States or other entities, and because donated land or interests in land constitute a significant portion of cost-sharing contributions, it is vitally important that FS provide sufficient oversight of the appraisal process for such donations. Without adequate oversight of these appraisals, FS has no assurance that the values determined by the appraisals are correct, and consequently has no assurance that States met FLP cost-sharing requirements.

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<sup>1</sup> FS developed Implementation Guidelines for the FLP in June 1992 to provide general instruction and policy on project selection, cost sharing, the appraisal process, easement negotiations, and easement monitoring. The Implementation Guidelines were updated in August 1996 and June 2003.

We also found that FS' regions have different policies as to whether and under what circumstances they required Federal appraisers to review the appraisals performed by States' appraisers. This disparity among the regions has occurred because FS Washington officials did not believe that a national policy specifying when appraisal reviews should be performed by a Federal appraiser was needed and allowed regional officials to set their own policies. The Quality Assurance Inspection (QAI) system—FS' system of spot checks for FLP appraisals and appraisal reviews performed by non-Federal appraisers—has found numerous problems that could impact the value of appraisals for FLP projects. A nationally consistent use of Federal review appraisers would provide uniform oversight over the appraisal process and would enhance FS' oversight role in ensuring that payments for easements are made in accordance with Federal appraisal standards.

The QAI system is not serving its intended oversight function because FS is not performing as many inspections as it should. Even when QAIs do find problems, FS does not ensure that the States take corrective action to remedy deficiencies. We found that the QAIs conducted from 2006 through 2009 had identified a number of cases in which States are not adhering to Federal direction regarding appraisals, which might impact the dollar value of the appraisal. FS also had not set time frames for States to implement recommendations made in QAIs, and not until May 2010 did it establish penalties for States that do not implement QAI recommendations. These shortcomings stem from FS not regarding the QAI follow-up process as a priority because the agency believes that the existing informal post-QAI communications between States and FS regions and FS' overall 5-year reviews for each State are sufficient. Unless FS takes steps to improve its QAI system, it will not have an effective oversight tool for ensuring the integrity of the States' appraisal processes.

#### *FS Must Ensure States Meet Annual Monitoring Requirement*

As part of their participation in the FLP, States are supposed to conduct annual monitoring of conservation easements to verify that landowners are adhering to easement requirements (i.e., maintaining the easements as forestland). However, FS has not ensured that States are completing this required annual monitoring; we found that monitoring varies greatly from one region to another. This situation results from a lack of guidance to ensure compliance and from the lack of sufficient funding in some States to conduct annual monitoring. In addition, historically there have not been penalties for noncompliance; States with deficient track records for monitoring still received funding for new FLP projects. If monitoring is not conducted on conservation easements, valuable taxpayer dollars may be wasted because FS has no assurance that the landowners who receive FLP funding are continuing to practice conservation on the land.

In the future, it will become more difficult for States to monitor FLP conservation easements. From fiscal year (FY) 2002 to FY 2009, the number of easement tracts in the FLP more than tripled from 93 to 356. As the number of easements increases, so does the cost of perpetually monitoring them. The burden of paying for this monitoring falls to the States, as the FLP Implementation Guidelines state that FLP funds cannot be used for monitoring. Because States are already struggling to complete annual monitoring and the number of easements is continuing to increase, FS may need to assist the States in finding more efficient ways to meet the annual monitoring requirement.

### *Controls Over Accounting and Records Retention Need Strengthening*

The majority of the project files that we reviewed in FLIS, FS' electronic database for FLP data, contained erroneous information.<sup>2</sup> In more than half, there were discrepancies between FLIS entries and the actual State project files. For more than a third, there were discrepancies regarding acreage. For more than a fifth, there were discrepancies regarding the amount of FLP funds contributed. These discrepancies have occurred because FLIS entries are frequently not updated when a project is finalized and several categories of figures can change between the initial stages of a project and its finalization. Because FLIS-generated program reports are used for reporting to various decision-makers such as the U.S. Department of Agriculture (USDA) and Congress, it is important that FS ensure the database's integrity. The accuracy of the information in FLIS is critical to reporting program accomplishments to both USDA and Congress, which need the information to make the appropriate funding decisions regarding the program.

We also found that the FLP does not have a formal national records-retention policy. This situation stems from ambiguous wording in the FLP Implementation Guidelines. The Guidelines say that States must maintain permanent records for FLP properties, but do not specify which records must be kept permanently and only recommend—rather than require—that certain documents be kept. As a result of the lack of a formal policy, there is no uniformity among FLP-participating States as to what type of documents they keep within project files or the length of time for which they keep them. As the number of FLP projects increases, it is imperative that both FS and the States keep adequate records to ensure that the program can accurately track, monitor, and report the status of FLP projects. FS is currently revising its records-retention policy and issued an interim directive in July 2009 requiring that all FLP records be kept until the final directive comes out.

### *Conservation Easement Agreements Need To Be Standardized*

FS provides only limited guidance to the States as to how to develop the language for FLP conservation easements and does not require a thorough review of these easements. In the absence of guidance from FS, States are left to develop their own easement templates independently. As a result of this lack of guidance and direction, there is no uniformity in how States draft their easements or in how the FS regions review them: therefore, FS has no assurance that these easements contain terms most effective for FLP's purposes. According to FS, the best defense against the possibility of a conservation easement facing legal challenge is for the easement to be well-drafted. Therefore, it is imperative that FS provide adequate oversight of the States' development of the easement document.

### **Summary of Recommendations**

To strengthen FS' oversight of the appraisal process, we recommend that FS:

- Provide the States with additional guidance on certifying the value of land or interests in land donated to meet FLP cost-sharing requirements.

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<sup>2</sup> Within the four States selected for review, FLIS contains files on over 70 projects. We reviewed the files in FLIS for 26 of the projects.

- Develop a risk-based approach for determining the number of Federal appraisal reviews to conduct each year.
- Complete the required number of QAIs by reprioritizing existing resources, and revise the Quality Assurance Plan<sup>3</sup> to specify time frames for response and implementation and penalties for noncompliance.
- Require FLP Regional Managers to submit semi-annual progress reports on the implementation of QAI recommendations.

To ensure that States meet the monitoring requirement, we recommend that FS:

- Develop a standardized tracking mechanism to allow FLP Regional Coordinators to track their respective States' progress in meeting the annual monitoring requirement.
- Assist the States in exploring tools to facilitate annual monitoring more efficiently.

To ensure the accountability of the FLP and its reporting of information, we recommend that FS:

- Require the FLP Regional Coordinators to cross-check the information in FLIS against that in the project files and certify its accuracy and completeness.
- Finalize the records-retention policy for the FLP and provide additional guidance to the States.

To ensure that conservation easement agreements adequately protect the government's interests, we recommend that FS:

- Develop and implement a national conservation easement review policy.

## **Agency Response**

In its written response to the audit report, FS generally concurred with all the audit findings and recommendations. The complete written response is included at the end of the report.

## **OIG Position**

Based on FS' written response and estimated completion dates for corrective actions, OIG accepts FS' management decision on all but three of the audit recommendations. We will be able to accept your management decision for the remaining recommendations when you provide us with additional information as outlined in the OIG Position section of the report.

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<sup>3</sup> FS began conducting QAIs in February 2006 and formalized them with the Quality Assurance Plan for Forest Legacy Program Appraisals, finalized in September 2006.

## Background and Objectives

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### Background

The Forest Legacy Program (FLP), a Federal program in partnership with States, supports State efforts to protect private forest lands from being converted to non-forest uses. The FLP is a voluntary program for States and territories that focuses on the Government's acquisition of partial interests in privately owned forest lands. The program encourages and supports acquisition of conservation easements, which are legally binding agreements that transfer a negotiated set of property rights from one party to another without removing the property from private ownership. Most FLP conservation easements restrict development, require sustainable forest practices, and protect other values. The FLP complements private, Federal, and State/territory programs focusing on conservation in two ways: (1) it directly supports property acquisition, and (2) it supports efforts to acquire donated conservation easements.

Established in 1990 through an amendment to the Cooperative Forestry Assistance Act of 1978, the FLP was started as a result of a Congressional study of the Northern Forest, which stretches from Maine through northern New Hampshire and Vermont into northern New York. The report found that the landowners of the Northern Forest, which was 85 percent privately owned, were under increasing economic pressure to sell their forestland. The report recommended that action be taken to protect the long-term integrity and traditional uses of the Northern Forest. Congress subsequently directed the Secretary of Agriculture to establish a Forest Legacy Program throughout the United States.

The 1996 Farm Bill modified the program, allowing Forest Service (FS) to award grants, at the request of the participating State or territory, to the State/territory to carry out the FLP. Currently, all States and territories have requested this option, known as the "State grant" option. FS developed Implementation Guidelines for the program in 1992 to provide general instruction and policy on project selection, cost sharing, the appraisal process, easement negotiations, and easement monitoring. The Implementation Guidelines were updated in 1996 and 2003.

FS' Northeastern Area for State and Private Forestry administers the FLP in 20 Midwestern and Northeastern States and the District of Columbia. The Northeastern Area is an administrative unit within FS' State and Private Forestry Branch. The geographic area served by the Northeastern Area is 40 percent forested and 90 percent of the forested land is under State and private ownership. FS has regional offices located throughout the remainder of the United States responsible for administering the FLP in the remaining states and territories. Not all regions have their own FLP coordinators responsible for administering the FLP in their respective regions. For example, FS' Northern Region (Region 1) and Intermountain Region (Region 4) share the same FLP coordinator. Since the inception of the FLP in 1990, FS has provided over \$595 million for the conservation of private forest lands. The program has protected nearly 2 million acres in 43 States and territories.

In 2002, the Surveys and Investigations staff of the U.S. House of Representatives Committee on Appropriations conducted a review of the FLP and found that inadequate FS management and oversight of the FLP hampered the program's success. The report found that a number of unclear national program policies led to confusion in the field, particularly with regard to project

selection, sharing of costs, appraisals and appraisal reviews, easement negotiations, and monitoring. The report also found the FLP regional oversight structure to be ill-equipped to manage the growth in both project funding and State participation, and found that FS' financial accounting system was providing incomplete obligation and expenditure information, resulting in an inability to accurately evaluate the use of FLP funds. As a result of this review, FLP management took a number of steps to improve its management and oversight of the FLP, including developing a national strategic plan for the FLP and updating the FLP Implementation Guidelines to address issues such as sharing of costs, appraiser qualifications, appraisal review policy, and conservation easement monitoring. FS also implemented the Forest Legacy Information System (FLIS), an electronic database used to store FLP project information and track program accomplishments.<sup>4</sup>

### *Eligibility and Application Process*

FLP projects are nominated through a two-stage competitive process: State-level identification and approval, followed by a national review and ranking. Each project is ranked using three standardized criteria: (1) importance—the degree to which the public benefits from the protection and management of the property; (2) level of threat—the likelihood of conversion to non-forest uses resulting in a loss of forest values and public benefits; and (3) strategic aspect—the extent to which the project fits with a larger conservation plan, strategy, and initiative, and enhances previous conservation investments. Each fiscal year, the FS Washington Office submits a project list to the Office of Management and Budget (OMB) for funding consideration in the President's budget. Once the President's budget has been completed, the FS Washington Office notifies the appropriate House and Senate Committees and Subcommittees of the recommended projects for the upcoming fiscal year.

### *Cost Sharing*

The maximum Federal contribution for a project may not exceed 75 percent of total project costs, to the extent practicable. Each project's budget must include a minimum non-Federal contribution of 25 percent. The non-Federal contribution may consist of: (1) the value of land, or interests in land, dedicated to the FLP that is not paid for by the Federal government, (2) non-Federal costs associated with project implementation; and (3) other non-Federal costs associated with a grant or other agreement that meets the purpose of the FLP. The sharing of costs can occur at any phase of the FLP; however, in the case of a grant, the sharing of costs must occur within the life of a grant and meet all grant requirements.<sup>5</sup> Donations of land or interests in land must be documented to count as part of the non-Federal share of costs.

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<sup>4</sup> Developed by FS prior to the House review, FLIS contains individual project information such as project description, project strategic value and importance, number of acres protected, and cost-share data including the date the project was funded and completed. State staff and non-governmental entities, as well as FS FLP Regional Coordinators, enter information into FLIS. FS and the States use FLIS to report FLP information to USDA, the White House, and Congress.

<sup>5</sup> Federal requirements identify the grant period as beginning when the grant is formally awarded and ending after two years to ensure that the Federal funds are spent promptly. However, a grant may receive a maximum extension to 5 years. Allowable costs shall be determined in accordance with 7 Code of Federal Regulation (CFR) 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments."

## *Appraisals*

On all FLP projects, an appraisal of the land containing the easement must be prepared that conforms to Federal appraisal standards contained in *Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference (December 2000)*. Each appraisal must receive an independent review by a qualified review appraiser to ensure that it meets these standards. Appraisals and appraisal reviews may be conducted by any qualified appraiser meeting the minimum standards outlined in Appendix H of the 2003 Forest Legacy Program Implementation Guidelines. To ensure quality and accuracy, FS conducts spot checks—called Quality Assurance Inspections (QAIs)—of appraisals and appraisal reviews conducted by non-Federal reviewers. FS began conducting the QAIs in February 2006 and formalized them with the Quality Assurance Plan for Forest Legacy Program Appraisals (Quality Assurance Plan) in September 2006. Each State is to undergo a QAI once every 5 years.

## *Conservation Easement Monitoring*

The governmental entity holding title to interests in land acquired under the FLP shall monitor and manage those interests in perpetuity. The holder may delegate or assign monitoring, management, and enforcement responsibilities over lands and interests in lands acquired under the FLP only to other Federal agencies or State or local government entities. The governmental entity responsible for monitoring, management, and enforcement of the conservation easement may in turn delegate or assign management and monitoring authority to other parties, to include land trusts, conservation groups, or other governmental entities. Management of Federally owned interests in lands is reserved to FS, but may be assigned to State or local governments or another Federal agency through mutual agreement. If a State chooses the “State grant” option, the State agencies are responsible for all monitoring and management of conservation easements. Monitoring FLP conservation easements shall occur periodically, but not less than annually. Any material departure from the terms of the easement should be noted, with the easement holder being immediately notified. Enforcement action may be taken if the landowner does not correct the breach within a reasonable time period. The unit of government holding the conservation easement has the initial responsibility to enforce the conservation easement.

## **Objectives**

The overall objective of our audit was to evaluate the adequacy of FS’ controls over the FLP. Specifically, we evaluated whether projects selected to receive FLP funding met eligibility requirements, whether project costs were adequately matched by non-Federal entities, and whether projects were properly appraised and monitored. We also evaluated the electronic databases that FS uses to track and report FLP accomplishments and whether the conservation easement agreements being used in the FLP adequately protected the FS investment.

## Section 1: Appraisals and Appraisal Reviews

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### Finding 1: FS Needs to Strengthen Its Oversight Over Appraisals of Donated Land or Interests in Land

FS needs to strengthen its oversight over appraisals of land or interests in land donated in order to meet FLP cost-sharing requirements. Federal regulations and the FLP Implementation Guidelines do not require the use of Federal appraisal standards<sup>6</sup> or an appraisal review for donated land or interests in land. In addition, appraisals for donated land or interests in land are not included in the scope of the QAI function, FS' system of spot checks for FLP appraisals and appraisal reviews. Without adequate oversight of appraisals for donated land or interests in land, FS has no assurance that the values determined by these appraisals are correct, and consequently has no assurance that States met FLP cost-sharing requirements.

The portion of United States Code dealing with FLP requires that at least 25 percent of the total cost of an FLP project come from non-Federal sources, such as State or local governments, non-governmental organizations (NGOs), or private landowners.<sup>7</sup> To meet this requirement, the non-Federal partners in FLP projects often donate land or interests in land. In the four States we visited, donated lands or interests in land comprised almost one-third of the total cost-share contributions. However, the regulations regarding appraisals of donated land or interests in land (7 CFR 3015.56) do not require such appraisals to meet Federal appraisal standards or undergo appraisal reviews. Instead, these appraisals must meet only *Uniform Standards of Professional Appraisal Practice* (USPAP) requirements, whereas appraisals for properties being placed under FLP conservation easements must meet both USPAP requirements and Federal appraisal standards.

For the States we visited, total project costs were approximately \$306 million.<sup>8</sup> Of that amount, over \$162 million, or 53 percent, was provided by non-Federal sources. Donated land or interests in land comprised 31 percent<sup>9</sup> of cost-sharing funds.<sup>10</sup>

Because the amount of Federal funding can be contingent on the cost-sharing amount put up by States or other entities, and because donated land or interests in land constitute a significant portion of cost-sharing funds, it is vitally important that FS provide sufficient oversight over the appraisal process for such donations. Currently, these appraisals are not required to have an appraisal review, nor are there requirements for the appraiser's qualifications or relevant work experience to be reviewed by FS. The 2003 FLP Implementation Guidelines require only that the donation of land or interest in land be documented. Without adequate oversight of the appraisal process for donated land or interests in land, FS has no assurance that the values derived by such appraisals are accurate, that these appraisals use the appropriate methodology, or

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<sup>6</sup> Federal appraisal standards are detailed in the *Uniform Appraisal Standards for Federal Land Acquisitions*, December 2000.

<sup>7</sup> 16 U.S.C. 2103c(j)(2), January 24, 2002.

<sup>8</sup> This figure includes all tracts and/or projects that were identified in FLIS as "closed" or "funded" for the four States we visited.

<sup>9</sup> To determine the amount of donated land or interests in land that comprised the cost-share component for the States we visited, we included all tracts for the States we visited that did not include any FLP funding. This figure does not include "bargain sales."

<sup>10</sup> Due to limitations in the FLP's electronic database, the Forest Legacy Information System (see Finding 5, "FS' Database for Tracking FLP Accomplishments Is Not Reliable"), we were not able to determine the specific type of cost-share—i.e., cash, donated land or interests in land, bargain sale, or in-kind contribution—for \$29.4 million of the total cost-sharing amount of \$161 million. However, of the remaining \$131.6 million, donated land or interests in land comprised \$40.9 million, or 31 percent.

that the appraisers are qualified and experienced in conducting appraisals of the donation's type. In addition, there is also the risk that landowners may put pressure on appraisers in the hope of getting the highest possible appraisal values for their lands, and thus the largest possible tax deductions.

Appraisals of donated land or interests in land must meet Internal Revenue Service (IRS) standards. However, the IRS has stated<sup>11</sup> that appraisals of conservation easements are often based on unrealistic assumptions about the "highest and best use"<sup>12</sup> of the land, conducted without regard to current zoning law, or conducted pursuant to inadequate professional standards. Given the lack of sufficient FS oversight and the IRS' own acknowledgment of the problems with such appraisals, we are concerned by FS' reliance on these appraisals to establish the value of land or interests in land donated for cost-sharing purposes.

FS appraisal staff with whom we spoke raised concerns about the quality of the appraisals for donated land or donated interests in land. One FS appraiser noted that the appraisers hired to do such appraisals do not have to meet the qualifications necessary to perform FLP appraisals. FS appraisal staff also said that the quality of such appraisals is suspect because of lack of oversight. One member of the appraisal staff advised us that his past experience with appraisals that were prepared without the prospect of significant review did not give him confidence in the work product. Appraisal staff also advised us that the instructions issued to the appraiser could very well be instructions that Federal appraisers would not issue or would not allow, and could thus significantly inflate the value of the land.

FS FLP Program Managers did not share the FS appraisal staff's concerns regarding the quality of appraisals for donated land or interests in land. Program staff indicated to us that States that expend \$500,000 or more in a year in Federal awards undergo an OMB A-133 audit,<sup>13</sup> which they felt was a sufficient control. We disagree with FS program staff in this regard. The OMB A-133 audit is a review of the general control environment for Federal grants at a non-Federal entity and a review of the auditee's financial statements, but this type of audit in no way ensures that an appraisal submitted for donated land or interests in land has used the appropriate methodology to derive a value or that it was performed by a qualified appraiser. The OMB A-133 audit is not a sufficient substitute for oversight by qualified appraisers.

In our audit, we also found differences in how States certify to FS the value of donated land or interests in land used for cost-sharing purposes. The regulations in 7 CFR 3015.56 state that when land or interests in land are donated, "the awarding agency must require that the market value or fair rental rate be set by an independent appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated." In the case of the FLP, FS requires that States certify the value of donated land or interests in land. However, FS has not developed a policy that describes how this certification is to be completed. As a result, each State is using its own method of certification. We found that one State submits a copy of

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<sup>11</sup> Steven T. Miller, Commissioner, Tax Exempt and Government Entities, IRS, "Remarks before the Spring Public Lands Conference," March 28, 2006.

<sup>12</sup> The "highest and best use" of the property is the highest and most profitable use (e.g., residential use, use as timber land, etc.) for which the property is adaptable and needed or likely to be needed in the reasonably near future.

<sup>13</sup> OMB Circular No. A-133, Subpart B, Section 200, pg 8 (June 26, 2007).

the certificate of value (completed by the appraiser) to FS, while another submits its final grant close-out report.

To increase its oversight over the appraisals of donations of land and interests in land and to have some level of assurance that the appraised values were accurately determined, FS needs to provide the States additional guidance on what steps they should take in order to certify the value of the donated land or interests in land. At a minimum, this guidance should require participating States to verify the qualifications of the appraisers who conduct appraisals for donated land or interests in land. FS should also clarify to the States what is meant by the “certification of value” for donated land or interests in land. States should be required to submit this certification to the appropriate FLP Regional Program Manager and maintain a copy of this certification in the State’s file for the project. To support such certifications, States should also be required to keep a copy of the appraisal obtained by the landowner, as well as any other documentation supporting the State’s certification. Finally, FS should check whether the States have the required documentation to support their certifications of value during the program reviews that FS conducts every 5 years at the State level.

### **Recommendation 1**

Provide the States with additional guidance on what steps they should take in order to certify the value of the donated land or interests in land. At a minimum, this guidance should require participating States to verify the qualifications of the appraisers who conduct appraisals for donated land or interests in land.

### **Agency Response**

FS generally concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the Regions/Northeastern Area/ International Institute of Tropical Forestry (R/A/I) and States providing guidance on certifying the value of donated lands or interest in lands used as match for a FLP grant, consistent with 7 CFR 3016.24. This guidance will not require that the States verify appraiser qualifications. The FLP requires a State to ensure an appraiser meets FLP qualifications, but only when FLP funds are involved. For donations, the IRS has requirements that govern the qualifications of appraisers who develop a value for charitable contributions by landowner. It is not appropriate to require a State to determine if the appraiser complies with these IRS requirements. Therefore, we will provide guidance to States on their obligation to certify value of cost share, including the value of donated lands or interest in lands, but not require that they determine if an appraiser, working for a landowner, complies with IRS requirements. FS’ estimated completion date for this action is December 30, 2011.

### **OIG Position**

We do not accept FS’ management decision on this recommendation. To reach management decision, FS needs to require States to review the qualifications of the appraisers who performed the appraisals for the donated land or interests in land in order to ensure they are licensed and certified for the type of property being appraised in the State in which the property is located. This can be easily verified by visiting States’ websites containing

appraisers' licensing and certification information. Without this verification, States would be unable to adequately support their "certification of value" for the donated land or interests in land. Furthermore, FS would lack the assurance it needs that the values established for the donated land or interest in lands was accurately determined and are therefore sufficient to meet the FLP cost-sharing requirement.

## **Recommendation 2**

Clarify to the States what is meant by the "certification of value" for donated land or interests in land.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on certifying the value of donated lands or interest in lands used as match for a FLP grant, consistent with 7 CFR 3016.24. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS' management decision on this recommendation.

## **Recommendation 3**

Require States to submit the "certification of value" to the appropriate FLP Regional Program Manager and maintain a copy of this certification in the State's file for the project.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on certifying the value for cost share, including donated lands or interest in lands used as match for a FLP grant, consistent with 7 CFR 3016.24, and retain those supporting documents in the State's files. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We do not accept FS' management decision on this recommendation. To reach management decision, FS needs to also require the States to submit the "certification of value" to the appropriate FLP Regional Program Manager. This will provide FS the assurance it needs from the States that the values of donated land or interests in land are adequately supported and are therefore sufficient to meet the FLP cost-sharing requirement.

## **Recommendation 4**

Require States to support their “certification of value” for donated land or interests in land by retaining in the State’s file for the project a copy of the appraisal obtained by the landowner, as well as any other documentation supporting the State’s “certification of value.”

### **Agency Response**

FS generally agrees with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on certifying value for cost share including any donated lands or interest in lands, and retain those supporting documents in the State’s files. This guidance will not require that the State obtain a copy of the landowner’s appraisal for donated land or interest in land. The 7 CFR 3016.24 does not require an appraisal to be completed but rather requires the grantee to obtain documents they feel necessary to verify sufficient cost share was provided, which may include the market value as set by an independent appraiser, and that value certified by the grantee. FS will not require the State to acquire a copy of an appraisal that is neither their property nor paid for by them. An appraisal obtained by the landowner may not be willingly provided and may not be consistent with the State’s grant and real estate procedures. FS’ estimated completion date for this action is December 30, 2011.

### **OIG Position**

We do not accept FS’ management decision on this recommendation. To reach management decision, FS needs to require States to support their “certification of value” for the donated land or interests in land used to meet the FLP cost-sharing requirement by obtaining from the landowners copies of their appraisals, when available. Landowners’ donated land or interests in land will likely have already been appraised for tax purposes. If landowners are unwilling to provide the necessary documentation, including copies of their appraisals already conducted to support the value of their donated land and interests in land, they should not be allowed to use the land or interests in land to meet the FLP cost-sharing requirement.

## **Recommendation 5**

Verify that the States have the required documentation to support their “certifications of value” during the program reviews that FS conducts every 5 years at the State level.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on ensuring that the 5-year program reviews include review of documentation by the States for certification of value. FS’ estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS’ management decision on this recommendation.

## **Finding 2: Risk Based Approach Needed for Conducting Federal Appraisal Reviews**

We found that FS' regions have different policies as to whether and under what circumstances they require that appraisal reviews be performed by a Federal appraiser. These policies vary significantly from one region to another. For example, one region does not require Federal appraisers for any appraisal reviews, another region requires Federal appraisers to review all projects above a certain funding threshold, and a third region uses a Federal appraiser for all appraisal reviews. This disparity among the regions has occurred because FS Washington officials did not believe that a national policy was needed specifying when appraisal reviews should be performed by a Federal appraiser and allowed regional officials to set their own policies. However, the lack of a national policy on when Federal appraisers should be used has adversely affected the quality of the appraisals conducted, resulting in the use of unqualified appraisers and inappropriate appraisal standards and valuation methodologies. A nationally consistent use of Federal review appraisers would be the best way of providing uniform oversight over the appraisal process and would enhance FS' oversight role in ensuring that payments for the easements are made in accordance with Federal appraisal standards.

The portion of the United States Code related to the FLP requires that payments made using FLP funds be "in accordance with Federal appraisal and acquisition standards and procedures."<sup>14</sup> Those Federal appraisal standards require that appraisals be reviewed by a qualified review appraiser.<sup>15</sup> The FLP Implementation Guidelines state that the appraisal review may be conducted by any qualified appraiser meeting specific criteria contained in the Guidelines. They do not require that the review appraiser be a Federal official. Nothing, however, prevents FS or its regions from requiring that these appraisal reviews—at least in certain cases—be performed by a Federal reviewer.

The 2002 House report<sup>16</sup> on the FLP identified a lack of a national policy regarding the use of Federal appraisers in the program and an inconsistency among the regions in their use of these appraisers. We found that the requirements for the use of Federal review appraisers continue to vary among regions. FS' Region 1 (the Northern Region) does not require Federal appraisers for any appraisal reviews. Since 2001, FS' Northeastern Area for State and Private Forestry has required that appraisals for projects involving \$1 million or more in FLP funds be reviewed by a Federal appraiser. Since 2006, following a QAI that showed that there were issues compromising the integrity of appraisals, Region 4 (the Intermountain Region) has been using—on an informal basis—the FS Regional Appraiser for all appraisal reviews and all related services.<sup>17</sup>

The Northeastern Area, which currently receives almost half of the FLP's funding, instituted its policy following a Washington Office review of the region's administration of the FLP. The idea behind establishing a \$1 million threshold was to reclaim the Federal oversight role that the

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<sup>14</sup> 16 U.S.C. 2103c(j)(1), January 24, 2002.

<sup>15</sup> *Uniform Appraisal Standards for Federal Land Acquisitions*, p. 69, December 2000.

<sup>16</sup> Surveys and Investigations Staff, "A Report to the Committee on Appropriations, U.S. House of Representatives on the U.S. Forest Service Forest Legacy Program," June 2002.

<sup>17</sup> These related services include issuing appraisal instructions, reviewing the appraiser's qualifications, and participating in a pre-work meeting with the appraiser.

1996 shift to the “State grant” option<sup>18</sup> had largely removed. The policy also offered a concession to the States—who viewed FS appraisers as often taking too long to complete appraisal reviews—by allowing them to continue using private-sector review appraisers for projects involving less than \$1 million in FLP funds.<sup>19</sup>

As we have noted, policies on the use of private-sector appraisers for appraisal reviews vary significantly among FS regions. However, most regions allow States to use such appraisers to conduct appraisal reviews. For 54 percent<sup>20</sup> of the projects whose files we examined in our audit, the appraisal reviews had been conducted by private-sector appraisers.

There are a number of compelling reasons to shift appraisal reviews to Federal appraisers to the extent possible. The QAI system has found numerous appraisal review-related problems that could impact the value of appraisals for FLP projects. (See more about the QAI process in Finding 3, “FS Needs to Improve Its QAI System for Appraisals and Appraisal Reviews.”) For example, the appraisal reviewer is supposed to issue appraisal instructions, but 12 of the 19 (or 63 percent) of the QAIs completed found problems with appraisal instructions—such as the person issuing the instructions was not qualified to do so, or had no real estate background, or the instructions were inappropriate—that could impact the value of the property being appraised. Eighty-nine percent of the QAIs found that States had not yet developed a process to review the qualifications of appraisers or appraisal reviewers, and/or that they were not documenting these qualifications. Even though the review appraiser certified it as having done so, 53 percent of QAIs found that at least 1 appraisal in the State did not meet Federal appraisal standards.

The 2002 House report stated that a number of FS appraisal staff expressed concerns over the quality of appraisals conducted for FLP projects. The reservations remain; in 2006, FS appraisal staff identified their specific concerns to FLP Program Managers at the National FLP Program Manager meeting and, in 2009, FS appraisal staff told us that these concerns were, in general, still valid. Among the appraisal issues cited were:

- use of IRS appraisal standards rather than the required Federal appraisal standards;
- problems with valuation methodology;<sup>21</sup>
- problems with analysis of a property’s “highest and best use;”
- problems with analysis of the “larger parcel;”<sup>22</sup>
- problems with the real estate appraised (i.e., the appraisal not adequately describing the actual easement to be placed on the property);

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<sup>18</sup> For the first few years of the FLP—prior to the 1996 Farm Bill’s creation of the “State grant” option—the Federal Government was directly acquiring the lands or interests in lands. As a result, most appraisals and all appraisal reviews were conducted by Federal appraisers. With the creation of the “State grant” option, which all of the FLP-enrolled States and territories have chosen, the administration of the program shifted from FS to the individual States.

<sup>19</sup> According to FS, it plans to discontinue the Northeastern Area’s policy requiring that appraisals for projects involving \$1 million or more in FLP funds be reviewed by a Federal appraiser because the number of projects exceeding \$1 million has grown significantly over the past 5 years. In FY 2010 alone, 30 of the 36 (or 83 percent) funded projects exceeded \$1 million. If FS continues with this policy, it would need to increase the dollar threshold for which a Federal appraiser would be used to account for the increase in the value of the projects currently being awarded.

<sup>20</sup> The file for three of the projects reviewed did not contain a copy of the appraisal review. This percentage was therefore calculated based on our review of 23 appraisal reviews as opposed to 26.

<sup>21</sup> The three methodologies—income approach, development approach, and sales comparison approach—can yield very different results. Federal appraisal standards direct that the sales comparison approach, which estimates a property’s market value by comparing transactions of similar land, be used unless information on comparable properties does not exist. In addition to using the correct valuation methodology, it is also important for the appraiser to apply that methodology properly—for more, see Finding 3.

<sup>22</sup> Specifically, problems with appraisers inappropriately valuing only the proposed easement area rather than the entire property before and after it is restricted by the easement.

- timber appraisal being performed by appraisers not qualified to do so;
- problems with specific requirements<sup>23</sup> of Federal appraisal standards; and
- bad maps (e.g., the map showing the wrong property).

The FS Chief Appraiser said that he would like to see FS conduct all appraisal reviews for FLP projects, but advised us that current staffing levels would not allow it. We recognize these limitations. In light of its limited resources, we believe FS needs to develop a risk-based approach for determining the number of Federal appraisal reviews to conduct each year. In addition to considering a project's dollar value, such an approach should also consider the complexity of the project's appraisal, the availability of qualified appraisers in the State, and any problems that FS found when conducting the most recent QAI of the State's appraisal process. This solution would allow FS to increase the level of oversight for FLP appraisals where it is most needed while minimizing the additional workload placed on Federal appraisers.

## **Recommendation 6**

Develop a risk-based approach for determining the number of appraisal reviews that should be conducted by Federal appraisers each year. In addition to considering each project's dollar value, this risk-based approach should also consider the complexity of the project's appraisal, the availability of qualified appraisers in the State, and any problems that FS found when conducting the most recent QAI of the State's appraisal process.

## **Agency Response**

FS concurs with this audit recommendation. FS will conduct a meeting with the FS appraisers by June 30, 2011, to consider how best to establish a risk-based approach, and develop a strategy by March 2, 2012, for determining the number of appraisal reviews that should be conducted by Federal appraisers each year. The risk-based approach FS establishes will take into consideration each project's dollar value, the complexity of the project's appraisal, the availability of qualified appraisers in the State, and the problems that FS found when conducting the most recent QAI of the State's appraisal process. FS' estimated completion date for this action is March 2, 2012.

## **OIG Position**

We accept FS' management decision on this recommendation.

## **Finding 3: FS Needs to Improve its QAI System for Appraisals and Appraisal Reviews**

The QAI system is not serving its intended oversight function because FS is not performing as many inspections as it should. Even when QAIs find problems, FS does not ensure that the States take corrective action to remedy deficiencies, particularly those affecting appraisal values. These shortcomings stem from FS not regarding the QAI follow-up process as a priority because

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<sup>23</sup> These include the definition of value, the jurisdictional exception, appropriate language in certification, 10-year history of subject transactions, and the inclusion of the last sale (if recent) in the analysis.

the agency believes that the existing informal post-QAI communications between States and FS regions, in conjunction with FS' overall 5-year reviews for each State, are sufficient. Unless FS takes steps to improve its QAI system, it will not have an effective oversight tool for ensuring the integrity of the States' appraisal processes.

In response to concerns expressed in the 2002 House report,<sup>24</sup> FS revised the FLP Implementation Guidelines in June 2003 to state: "The FS will conduct spot checks of appraisals and appraisal reviews to ensure quality and accuracy." FS began conducting these spot checks—QAIs—in February 2006 and formalized them with the Quality Assurance Plan for Forest Legacy Program Appraisals, finalized in September 2006. A QAI examines a State's overall infrastructure<sup>25</sup> for FLP appraisals and appraisal reviews, and examines a sample of appraisal reports and appraisal review reports to check for compliance with Federal appraisal standards. According to the Quality Assurance Plan, each State is to undergo a QAI once every 5 years. The QAI is distinct from FS' overall review for each State, which is also supposed to take place once every 5 years. A QAI looks specifically at a State's appraisal process, whereas the overall 5-year review has a much broader scope. The 5-year review is intended to determine whether the desired program results or benefits are achieved, whether objectives established by legislation are met, and whether the State has considered alternatives that might reduce costs or increase outputs.

FS should be commended for developing the QAI system. The system has increased the level of FS oversight over the appraisal process in at least one region (Region 4 - the Intermountain Region), and has provided valuable feedback to the States regarding their appraisal processes. However, although the QAI concept is laudable, our review found multiple deficiencies in its implementation that have impeded its effectiveness; chief among them is that QAIs are behind schedule. Compounding this problem is that FS is not working with the States to develop the required follow-up document or to ensure that States take corrective actions when problems are identified.

### **FS Is Not Conducting All of the Required QAIs**

Of the approximately 21 QAIs that should have been performed<sup>26</sup> in the 3 years between September 2006 (when the Quality Assurance Plan was finalized) and September 2009, FS completed 15, or 71 percent.<sup>27</sup> FS has fallen behind schedule in conducting QAIs because it has not assigned enough personnel and has not made QAIs a priority. Without completing QAIs, FS lacks a full understanding of how States are conducting appraisals.

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<sup>24</sup> Surveys and Investigations Staff. "A Report to the Committee on Appropriations, U.S. House of Representatives on the U.S. Forest Service Forest Legacy Program," June 2002.

<sup>25</sup> Specific appraisal infrastructure elements that the QAI examines include: State law related to real estate appraisal and review; contracting for appraisals and appraisal reviews; and appraisal assignment data requirements.

<sup>26</sup> Since the primary purpose of the QAI is to review the State's appraisal process, QAIs are not performed in a State until the project file has closed on at least one tract of land (i.e., the State has conducted at least one appraisal and appraisal review). As of September 2006, only 35 States met this criterion. We used this number as our basis for determining how many QAIs should have been completed from September 2006 to September 2009.

<sup>27</sup> FS performed an additional four QAIs between February 2006 and September 2006 prior to the finalization of the Quality Assurance Plan. We did not include these four QAIs when calculating the number of QAIs that should have been completed since the Quality Assurance Plan was not yet finalized.

According to the Quality Assurance Plan, each State is to undergo a QAI once every 5 years. As of April 2010, 43 States and territories are participants in the program and have completed an appraisal and appraisal review on at least one tract of land, meaning that FS should now complete about 9 QAIs per year. However, although FS had 10 QAIs scheduled for calendar year 2009, as of the end of the year it had finished 6. The FS Chief Appraiser told us that the 2009 schedule was ambitious and that the limited FS appraisal staff impedes the ability to complete the QAIs in a timely manner. FS completed 19 QAIs between February 2006 and September 2009 and has not completed more than 6 QAIs in any given year.

FS has not made the QAI process a priority. Although the June 2003 FLP Implementation Guidelines state “FS will conduct spot checks of appraisals and appraisal reviews to ensure quality and accuracy,” the first QAI was not completed until February 2006, more than 2.5 years after the June 2003 issuance of the revised guidelines. In addition, the majority of QAIs completed have been conducted primarily by two FS appraisers—one in the Northeastern Area for State and Private Forestry and one in Region 8 (the Southern Region)—who hold Full-Time Equivalent (FTE) positions in the FLP. For FS appraisers other than these two, FLP work is generally viewed as a collateral duty. FS has proposed eliminating one of the two FTE FLP appraiser positions, a decision that would further hamper FS’ ability to complete the QAIs on a timely basis.

The fact that the QAI process is behind schedule, means that many potential problems are not being detected or addressed. In reviewing and analyzing the 19 QAIs<sup>28</sup> conducted from February 2006 through September 2009, we found that these QAIs had identified a number of cases in which States are not adhering to Federal direction regarding appraisals and where this noncompliance might impact the dollar value of the appraisal:

- Fifteen of the 19 QAIs, or 79 percent, showed that some or all of the State-approved appraisals lacked sufficient consideration of the “larger parcel”—that is to say, they did not properly identify and value the entire property when completing the appraisal.<sup>29</sup>
- Twelve of the 19 QAIs, or 63 percent, identified problems with the appraisal instructions issued to the appraiser—for example, the person issuing the instructions was not qualified to do so or had no real estate background, or the instructions were inappropriate—that could impact the value of the property being appraised.<sup>30</sup> With regard to one QAI-reviewed project involving a total of \$5.9 million in FLP funds, FS appraisal staff told us that the instructions issued for the project would not have been approved by a Federal appraiser and that, in the FS appraiser’s opinion, the appraisal instructions significantly impacted the value derived in the appraisal. The FS appraiser, however, could not quantify the impact on the appraised value of the property without conducting another appraisal, which is not part of the QAI process.

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<sup>28</sup> For purposes of our analysis, we included the four QAIs that were completed prior to the finalization of the Quality Assurance Plan (i.e., those completed prior to September 2006).

<sup>29</sup> Federal appraisal standards require that for conservation easements, the appraisal must include the whole tract of land, rather than just the portion that has the easement placed on it. However, FS appraisal staff told us that it is common to see appraisals that make this error and that such a mistake can result in a significant overstatement of the larger parcel’s loss in value, leading to a larger payment to the landowner.

<sup>30</sup> The FLP Implementation Guidelines require that the review appraiser develop project-specific appraisal instructions for the appraiser. Without appropriate appraisal instructions, appraisals can be inaccurate—the wrong valuation methodology could be used, the wrong property could be appraised, the larger parcel could be omitted from the valuation, or inappropriate “extraordinary assumptions” could be made.

Similarly, in our own examination of 26 FLP projects in 4 States, we found that for 43 percent<sup>31</sup> of FLP project appraisals, appraisal instructions were not included in the file and there was no indication that appraisal instructions had been issued. Of the 13 FLP projects whose files did include appraisal instructions, 3 projects had appraisal instructions that had been issued by third parties, such as landowners or non-governmental entities. Not only is a third party unlikely to be qualified to prepare appraisal instructions, there is an obvious conflict of interest when that third party is the landowner.

- Eight of the 19 QAIs, or 42 percent, cited problems with the valuation methodology that was used. Of all the QAI-related factors we examined, FS appraisal staff identified this one as the single greatest contributor to inappropriate results. It is important for the correct valuation methodology to be used because the three different methodologies— income (capitalization) approach, development approach, and sales comparison approach—can yield very different results. Federal appraisal standards direct that the sales comparison approach—which estimates a property’s market value by comparing transactions of similar land—be used, unless information on comparable properties does not exist. In addition to using the correct valuation methodology, it is also important for that methodology to be applied properly. For example, in the case of one FLP property, a Federal review appraiser rejected three appraisals—two for \$4.08 million and one for \$4.3 million—before approving the fourth appraisal, for the significantly lower amount of \$1.44 million. In this case, examples of problems with the rejected appraisals are the appraiser’s failure to use the “before and after”<sup>32</sup> methodology and the appraiser’s use of the sales comparison approach with regard to sales that were not in fact comparable.
- Eight of the 19 QAIs, or 42 percent, showed no evidence of pre-work meetings having taken place between the appraiser and the reviewer. (In our own examination of 26 projects in four States, 61 percent of appraisals fit this description.) These meetings are required by the FLP Implementation Guidelines, and they are important to detail what is expected from the appraiser, including the requirement to comply with Federal appraisal standards. Without pre-work meetings, inaccuracies—of the same nature as those resulting from problematic appraisal instructions—can occur. All of these problems can significantly impact the value derived in the appraisal. As a FS appraiser told us, an improper understanding of the assignment can lead to a significant impact on assignment results.
- Seventeen of the 19 QAIs, or 89 percent, showed that the State or territory in question had not developed a process to review the qualifications of the private-sector appraisers conducting appraisals or appraisal reviews. A FS appraiser told us that unqualified appraisers—and, more importantly, unqualified review appraisers—could lead to inappropriate valuation results.

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<sup>31</sup> The file for three of the projects reviewed did not contain a copy of the appraisal. This percentage was therefore calculated based on 23 appraisals reviewed as opposed to 26.

<sup>32</sup> The “before and after” methodology examines a property’s value before and after a conservation easement is placed on the property—i.e., the difference between the value of the unencumbered property and the encumbered property.

## **FS Is Not Working with States to Develop the Required Follow-up Documents or To Ensure that States Take Corrective Actions When Problems Are Identified**

For the 19 QAIs that had been completed by the end of calendar year 2009, 18 of the 19 States/territories involved had not submitted the required follow-up documentation.<sup>33</sup> States have neglected to respond in a timely manner because the Quality Assurance Plan does not provide them with clear deadlines and because FS does not penalize them if they fail to document that QAI-identified problems have been corrected. This stems from FS not regarding the QAI follow-up process as a priority. FS feels that the existing informal post-QAI communications between States and FS regions, in conjunction with FS' overall 5-year reviews for each State, are a sufficient substitute for the follow-up document required by the Quality Assurance Plan. However, if States do not provide this documentation, FS lacks assurance that QAIs are serving their intended function of correcting deficiencies.

The Quality Assurance Plan states that FS “will work with the State to develop a follow-up document that explains how the State is already addressing, or plans to address, the recommendations” and “will work with the State to implement report recommendations.” However, this guidance lacks any mention of time frames or of penalties for noncompliance. In addition, although the Quality Assurance Plan implies that FS will work collaboratively with the States, in practice, the FS Regions expect States to produce this document independently.

The Quality Assurance Plan does not specify a time frame within which a State must complete the follow-up document in response to a QAI. In addition, FS officials have not followed up with States nor required them to complete this document. Without this document, FS has no formal assurance that States are implementing the recommendations made in the QAI. The FS Washington Office concurred that additional guidance needs to be provided to the Regions emphasizing that the States need to comply with the original direction and produce a follow-up document.

We found that, because FS has not required States to complete the follow-up document in response to the QAI, the FS Washington Office is not fully aware of the status of all the recommendations made in the completed QAIs. For example, the FS Washington Office told us that all States had taken corrective action recommended in the QAI, but one State we visited had not implemented two QAI recommendations, including a recommendation that “[t]he State should develop a process to screen appraiser qualifications and document that the minimum requirements in Appendix H of the June 2003 Guidelines are met before beginning an assignment.”<sup>34</sup>

States are doing some of the work, but they are not documenting it in accordance with the procedures specified in the Quality Assurance Plan. Furthermore, FS cannot say with any

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<sup>33</sup> We should note, however, that 3 of the 18 non-responding States/territories just had their QAIs performed in September 2009, and thus should be regarded in a different light than the other 15.

<sup>34</sup> The minimum requirements in Appendix H of the June 2003 Guidelines include: (1) certification as a general appraiser in the state where the appraised property is located; (2) completion within the last 10 years of the minimum classroom hours of non-duplicative education prescribed for the certified general real property appraiser classification by the Appraisal Standards Board of The Appraisal Foundation; (3) completion of at least 12 self-contained or summary appraisal reports of properties similar in scope and complexity to the appraised property in the preceding 3 years; and (4) completion of training in the application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions* approved for appraiser continuing education credit in the state where the appraiser is certified.

certainty that States have complied with QAI recommendations because FS is not requiring the States to submit follow-up documents in response. Instead, FS and the States are communicating by informal means, such as e-mail and telephone, hampering FS' tracking efforts and substantially reducing overall accountability. FS views such informal communications and the 5-year State review as a substitute for the formal follow-up document. However, the 5-year review, which examines a State's entire program in just a few days, does not include appraisals among the areas it reviews. For two States we visited, neither of which had submitted a follow-up document in response to its QAI, we searched the 5-year reviews and found no mention of appraisals or QAIs.

FS has not set a time frame for States to implement recommendations made in QAIs and only recently has it established penalties for States that do not implement QAI recommendations. One FS Regional Appraiser said to us that while QAIs are a step in the right direction, QAIs needed more "teeth" to require action on the State's part. Without repercussions, such as having future project funding withheld, States have no incentive to implement the recommendations made in QAIs.

To address this concern, FS recently developed a section to add to the project selection guidance that requires regions to evaluate a State's performance on "core program requirements," one of which is the adequacy of the State's action plan to address the QAI's recommendations.<sup>35</sup> If the State is significantly deficient in meeting any of the core program requirements, its proposed projects for that fiscal year would not be submitted to the national selection panel for consideration. We commend FS for its recent actions to ensure that only those States that take the necessary actions to correct the problems found during the QAI will have their projects funded.

We believe that the QAI can be a valuable internal control if administered properly. In fact, it is FS' only internal control for ensuring that appraisals performed by non-Federal appraisers meet Federal appraisal standards. Considering the importance of the QAI, FS needs to reprioritize its existing resources so that it can complete the required number of QAIs each year. For example, FS could train its current non-FLP appraisers to perform QAIs. Because QAIs are behind schedule, FS should also prioritize QAIs for the States that have not yet undergone them in order to focus on those that have had the least amount of FS appraisal staff involvement and/or received the highest level of funding.

FS should also require States to respond to the recommendations in a QAI within a reasonable time period (e.g., 60 days), including time frames as to when the actions recommended will be completed and providing a detailed reason when the State does not agree with a recommendation. The appraiser conducting the QAI should receive a copy of the State's response and confirm that the State's actions will satisfy the recommendations. The FS Washington Office should follow up by requiring FLP Regional Coordinators to submit semi-annual progress reports on the status of the recommendations for the States/territories in their respective regions until all of the recommendations have been implemented. FS should also revise the Quality Assurance Plan to specify the time frame in which a State must respond to the

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<sup>35</sup> Other core program requirements include the State's ability to meet the annual monitoring requirement and the adequacy of their conservation easement violation plan addressing significant conservation easement violations.

recommendations in a QAI, time frames for implementing recommendations, and penalties for not complying with recommendations.

### **Recommendation 7**

Complete the required number of QAIs each year by reprioritizing existing resources. For example, train other FS appraisers not currently assigned to the FLP to also perform QAIs.

#### **Agency Response**

FS concurs with this audit recommendation. The agency completed the required number of QAIs in FY 2010, and is on track to complete the required number of QAIs for FY 2011 by September 30, 2011. FS' estimated completion date for this action is December 30, 2011.

#### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 8**

Prioritize the remaining States that have not undergone QAIs in order to focus on those that have had the least amount of involvement by FS appraisal staff and/or received the highest levels of funding.

#### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process in order to focus on those that have had the least amount of involvement by FS and received the highest levels of funding. FS' estimated completion date for this action is December 30, 2011.

#### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 9**

Require States to respond to recommendations made in the QAI within a reasonable time period (e.g., 60 days), including time frames as to when the actions recommended will be completed and providing a detailed reason when the State does not agree with a recommendation.

#### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to include timeframes as to when the actions recommended will be completed and a detailed

reasoning when the State does not agree with a recommendation. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 10**

Provide the appraiser that conducted the QAI a copy of the State's response and confirm that the State's actions will satisfy the recommendations.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to ensure that a copy of State's response is provided to the appraiser to get their professional opinion on the adequacy of the State's response. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 11**

Require FLP Regional Coordinators to submit semi-annual progress reports on the status of the recommendations made in a QAI until all of the recommendations have been implemented.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to ensure that the FLP regional managers submit semi-annual progress reports. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 12**

Revise the Quality Assurance Plan to specify the time frame in which a State must respond to the recommendations in a QAI, time frames for implementing recommendations, and penalties for not complying with recommendations.

## **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to include timeframes and penalties. FS' estimated completion date for this action is December 30, 2011.

## **OIG Position**

We accept FS' management decision on this recommendation.

## Section 2: Monitoring

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### **Finding 4: FS Not Ensuring States Meet Annual Monitoring Requirement**

As part of their participation in the FLP, States are required to conduct annual monitoring of conservation easements to verify that landowners are adhering to easement requirements (i.e., maintaining the easements as forestland). However, FS has not ensured that States are completing this required annual monitoring. We found that monitoring varies greatly from one region to another. For the States we visited in our review, the percentage of annual monitoring completed ranged from 54 percent to 100 percent. This situation results from a lack of guidance from FS to ensure compliance and from the lack of sufficient funding in some States to conduct annual monitoring. In addition, historically, there have not been penalties for noncompliance; States with deficient track records for monitoring still received funding for new FLP projects. If monitoring is not conducted on conservation easements, valuable taxpayer dollars may be wasted because FS has no assurance that the landowners who receive FLP funding are continuing to practice conservation on the land. Although our review uncovered no major violations of FLP conservation easements and only a few minor violations, an audit of a similar USDA program showed that of 92 unmonitored easements, 37 easements—or 40 percent—had violations.<sup>36</sup>

The FLP Implementation Guidelines state, “Monitoring FLP conservation easements shall occur periodically, but not less than annually” and note that the visual inspection shall be “documented by a written report.” However, the Guidelines do not require States to submit reports—either for individual easements or for a State’s easements as a whole—to FS officials.

We found that FS has not established an effective system to ensure that States do in fact complete annual monitoring. Regional FLP Coordinators are responsible for ensuring that the States within their respective regions complete annual conservation easement monitoring and, according to the FS Washington Office, each FS region is responsible for checking to see if annual monitoring is taking place during the 5-year review that the region conducts for each State. These 5-year reviews are distinct from the QAI process, which is also supposed to take place for each State once every 5 years. A QAI looks specifically at a State’s appraisal process, but the 5-year review has a much broader scope. The 5-year review is intended to determine whether the desired program results or benefits are achieved, whether objectives established by legislation are met, and whether the State has considered alternatives that might reduce costs or increase outputs.

As noted earlier, for the States we visited, we found that the percentage of annual monitoring completed ranged from 54 percent to 100 percent.<sup>37</sup> A report by a task force from one of the regions stated that, although the FLP Implementation Guidelines and grant agreement both require monitoring, there is little incentive for compliance. We also found that FS does not require States to notify FLP Regional Coordinators when they complete annual monitoring or to submit annual monitoring reports. In fact, the only formal internal control for ensuring that monitoring is completed in a timely manner is the 5-year review.

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<sup>36</sup> “Natural Resources Conservation Service’s Wetlands Reserve Program Wetlands Restoration and Compliance,” August 2008.

<sup>37</sup> Our audit focused on conservation easement monitoring since the inception of the program for each of the States we visited. FS has since advised us that the two States in which we found the percentage of monitoring to be the lowest have significantly improved their monitoring completion rates to approximately 80 percent and 90 percent, respectively, for the period May 2009 to May 2010.

Monitoring is an important aspect of conservation; consistent monitoring of a property can find easement violations and reduce future easement violations. Further, it can detect ecosystem changes over time and creates a documented history of the property. Such a history is important because conservation easements are held in perpetuity. Over time, documentation can be used to track the effects of the conservation easement on the land.

Annual monitoring can timely detect violations, and thus allows the government to bring legal challenges against landowners who violate the terms of conservation easements. Monitoring is also important to ensure that the land remains in a condition consistent with FLP purposes. As the Senate Committee on Finance noted in a 2005 report on The Nature Conservancy, “Failure to enforce [easement] restrictions increases the risk that easement-restricted property will not be conserved in perpetuity or that the actual conservation benefits will be less than what was claimed [initially].”

Because the FLP monitoring requirement is not being adequately met, it is possible that conservation easement terms are being violated without the States or FS being aware. An August 2008 OIG audit report on the Wetlands Reserve Program (WRP) found that violations are likely to occur when monitoring does not take place.<sup>38</sup> Administered by USDA’s National Resources Conservation Service (NRCS) in agreement with other cooperating agencies and organizations, the WRP is a voluntary nationwide program that offers eligible landowners technical and financial support to restore or enhance qualified wetlands on their property. Under this program, NRCS purchases conservation easements from landowners and then develops and implements restoration plans. With both WRP and FLP, an easement is placed on the land and the monitoring responsibility falls on the State partner.

Just as FS has declined to withhold funds from States that do not submit the required follow-up documents in response to their QAIs (see Finding 3), FS has also declined to withhold funds from States that do not comply with monitoring requirements. The 2002 House report<sup>39</sup> on the FLP stated that FS officials do not consider a State’s monitoring capability when selecting projects for funding. In the competitive funding process, the score that a project receives is based on a number of factors, including whether a State has a surplus of non-completed projects, but it does not take into account the State’s ability to monitor its easements. Although FS officials informed us that they can withhold funding if States do not complete the required monitoring, it was not until May 2009 that FS modified the project scoring guidelines to include a State’s capacity to monitor conservation easements as an “additional consideration.” However, despite the change, we found that two States in which we identified monitoring deficiencies dating back at least a decade had projects funded for FY 2010.

FS officials tell us that the agency has since taken an additional step by developing a section to add to the project selection criteria that would require regions to evaluate a State’s performance on “core program requirements,” one of which would be the State’s ability to meet the annual monitoring requirement. If a State is found to be deficient in any one of the “core program

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<sup>38</sup> The OIG audit team found that annual monitoring was not being completed for 134 of the 153 easements that were selected for review. Of the 134 easements not being annually monitored, the audit team selected 92 for field visits and found violations on 37 of them, or 40 percent. Of the easements that had violations, the majority of them—34 of the 37—had not been annually monitored for 3 consecutive years.

<sup>39</sup> Surveys and Investigations Staff. “A Report to the Committee on Appropriations, U.S. House of Representatives on the U.S. Forest Service Forest Legacy Program,” June 2002.

requirements” and lacks an adequate plan to address the deficiency, the State’s proposed projects for that fiscal year will not be submitted to the national selection panel for consideration. FS informed us that for FY 2011, three States were determined to have significant deficiencies, and as a result, their projects were excluded from consideration for funding by the national panel. One of the three States was significantly deficient in meeting the annual monitoring requirement. We commend FS for its recent actions to ensure that only those States that are able to meet the annual monitoring requirement can have their projects funded.

However, to ensure that States’ proposed projects are properly considered during the selection process, FS needs a tracking system to ensure the annual monitoring requirement is being met. FS formally reviews once every 5 years whether a State is completing its monitoring obligations. This is not a sufficiently frequent interval for the agency to adequately ensure that landowners are adhering to easement terms. FS would benefit from developing a mechanism to track States’ annual monitoring of landowner compliance with the easements.

One State we visited recognized that it was having problems tracking its monitoring efforts. As a result, at the time of our visit, the State coordinator was developing a spreadsheet to keep track of the last time monitoring was performed, the person responsible for the monitoring, the status of violations, and other monitoring information. If FS developed a similar tracking mechanism for the FLP Regional Coordinators, FS could readily tell which States were not completing easement monitoring and which States were not penalizing easement violations. We believe that the use of a database like FLIS for this purpose would be ideal because it would allow FLP Regional Coordinators throughout the country and the FS Washington Office to have access to this monitoring information. To adequately track States’ progress in meeting the annual monitoring requirement, FS will also need to obtain copies of the States’ monitoring reports.

In the future, it will become increasingly difficult for States to monitor FLP conservation easements. From FY 2002 to FY 2009, FLP expanded from 93 conservation easement tracts to 356 tracts, an increase of 383 percent. As the number of conservation easements increases, so does the cost of perpetually monitoring them. The burden of paying for this monitoring falls to the States since the FLP Implementation Guidelines expressly state that FLP funds cannot be used for monitoring conservation easements.<sup>40</sup> The 2002 House report noted that a number of State officials expressed concern that in the future, the amount of land under their responsibility could grow to the point where the cost of completing the required monitoring would exceed the available resources. Not only is existing State funding often inadequate to complete monitoring, but also in today’s economic climate, such funding could be susceptible to cuts. In fact, in one State we reviewed, 17 State foresters, who were responsible for monitoring easements in the State, were in jeopardy of losing their jobs due to budget cuts.

Because States are struggling to complete annual monitoring of conservation easements, and the number of conservation easements that need to be monitored continues to increase every year, FS should assist the States in finding more efficient ways to meet the annual monitoring requirement. One option is to employ recent innovations in technology. For example, larger easements are generally more costly to monitor because they require more time to conduct the monitoring and more resources—including planes and/or helicopters—in addition to “on the

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<sup>40</sup> Part 2, Item II, Section B, page 24.

ground” inspections. NGOs such as The Nature Conservancy are using aerial monitoring for large parcels where “on the ground” monitoring may be impractical. Different methods of monitoring may be appropriate, depending on project size, location, and terrain. Options we encountered during our audit ranged from annual “on the ground” inspections combined with landowner contact to photo-point monitoring.<sup>41</sup>

One State we visited is developing a three-layered approach to monitoring with the help of a contractor. The first “layer,” or step, consists of using satellite imagery. If this step reveals something that needs further investigation, then the second “layer”—high-resolution satellite or aerial photography sampling—would be implemented. If this second step indicates areas of concern, the next “layer” consists of field/site visits to observe the conditions on the ground. The goal of this approach is to decrease monitoring costs over time.

Another option available would be to use a risk-based system. A risk-based system could lessen the on-site monitoring requirement from once a year to once every 2 years or even once every 3 years for easements that have no reported violations for a specified time frame. For example, the on-site monitoring requirement could be lessened to once every 3 years if there were no reported violations for 5 straight years. This method would still provide reasonable assurance that the easement was not being violated, while at the same time lessening the financial burden to States. This is the system used by the WRP. If an easement is monitored and no violations are found, WRP then conducts off-site (rather than on-site) evaluations for 2 years, followed by on-site monitoring every 3 years.

A third option would be to implement a system that assesses an easement’s vulnerability to abuse and then tailors the monitoring requirement accordingly (i.e., more vulnerable areas of the easement monitored on a more frequent basis and the entire parcel monitored on a more intermittent basis). For example, an easement that on one side abuts an area that is regularly logged and on the other side abuts a national or State forest might require inspection every year along the border of the former, but only every other year along the border of the latter. We note the WRP switched to this type of system as a result of OIG’s audit.

Without consistent monitoring of conservation easements, FS has limited assurance that the investment it is making in conservation is not being wasted. To ensure that only those States able to meet the annual monitoring requirement receive FLP funding, FS needs to develop a standardized tracking mechanism to allow FLP Regional Coordinators to track their respective States’ progress in meeting the annual monitoring requirement. To adequately track each State’s progress, FS will also need to require that all States submit their annual monitoring reports to their respective FLP Regional Program Coordinators. Finally, to help reduce the burden on the States, FS should assist the States in exploring tools to facilitate annual monitoring more efficiently such as the use of satellite imagery or other technology, a risk-based system, or a vulnerability-tailored system.

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<sup>41</sup> “Photo-point monitoring” is standing at a specific point on a property and taking a photo. The time, location, and direction of the photo are noted, and the photo can be compared with other photos from the same site taken at different times.

### **Recommendation 13**

Develop a standardized tracking mechanism to allow FLP Regional Coordinators to track their respective States' progress in meeting the annual monitoring requirement.

#### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on a standardized tracking mechanism for annual monitoring requirements. FS' estimated completion date for this action is December 30, 2011.

#### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 14**

Require all States to submit annual monitoring reports to their respective FLP Regional Coordinators.

#### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance requiring the States to submit an annual report that addresses status of conservation easement monitoring, identifies any significant violations, and discusses how they plan to address the violations. FS' estimated completion date for this action is December 30, 2011.

#### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 15**

Assist the States in exploring tools to facilitate annual monitoring more efficiently, such as the use of satellite imagery or other technology, a risk-based system, or a vulnerability-tailored system.

#### **Agency Response**

FS concurs with this audit recommendation. FS will complete ongoing work and provide information and resources as new tools become available. FS will also address monitoring tools in various regional meetings being held throughout the year. FS' estimated completion date for this action is March 2, 2012.

## **OIG Position**

We accept FS' management decision on this recommendation.

## Section 3: Accountability and Documentation

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### Finding 5: FS' Database for Tracking FLP Accomplishments Is Not Reliable

The majority of the project files we reviewed in the FLP's electronic database, FLIS, contained erroneous information.<sup>42</sup> In 15 of the 26 project files reviewed (or 58 percent) there were one or more discrepancies between FLIS entries and the actual State project files (see exhibit B). Ten of the 15 project files reviewed had discrepancies regarding the total cost of the project, including 1 project where the cost was off by almost \$600,000; 6 of the project files had discrepancies regarding the amount of FLP funds contributed, including 1 project where the amount was off by over \$500,000; and 9 of the project files had discrepancies regarding acreage, including 1 project where the acreage was off by 2,563 acres. These discrepancies have occurred because FLIS entries are frequently not updated when a project is finalized, and the figures for project cost, FLP funding contribution, and acreage can change between the initial stages of a project and its finalization. As a result, FLP accomplishments are not being accurately reported. The accuracy of the information in FLIS is critical to reporting program accomplishments to both USDA and Congress, which needs the information to make the appropriate funding decisions regarding the program.

FLIS is an electronic database instituted in January 2002 that contains individual project information such as the project's description and the acreage protected, the project's strategic value and importance, the date the project was funded and completed, and cost-share data. State staff and non-governmental entities, as well as FS FLP Regional Coordinators, enter information into FLIS. FS and the States use FLIS as a tracking tool and to report FLP information to USDA and Congress.

To verify the accuracy of FLIS data and to determine whether project entries were updated, we reviewed a total of 26 project files. Our comparison of data included in States' project files against data entered in FLIS identified major inconsistencies. Overall, in 58 percent of the projects we reviewed, there were discrepancies between FLIS entries and the actual State project files (see exhibit B). For 35 percent of the projects we reviewed, there were discrepancies regarding acreage. For 23 percent of the projects we reviewed, there were discrepancies regarding the amount of FLP funds contributed. Some notable discrepancies we found were:

- FLIS showed a project as being 572 acres with a total cost of about \$3.7 million, of which \$2.8 million were FLP funds. However, the actual project folder showed the project as being 480 acres with a total cost of about \$3.1 million, with \$2.3 million in FLP funds.
- For two projects in two different States we visited, FLIS included Federal funding (from the U.S. Fish and Wildlife Service) as part of the non-Federal cost-sharing amount.

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<sup>42</sup> Within the four States selected for review, FLIS contains files on over 70 projects. We reviewed the files in FLIS for 26 of the projects.

- We found two projects where the acquisition type (i.e., fee simple<sup>43</sup> vs. conservation easement) recorded in FLIS was not the same as in the actual project file.

Numerous project entries in FLIS are recorded during the initial stages of the project, such as the planning or the acquisition phase. However, we determined that frequently these entries are not updated by FLP Regional Coordinators or State program staff upon completion to reflect the actual final records. Information entered in FLIS during the initial stages—such as the project’s acreage—can change during the process of negotiating with landowners and thus may be different in the final deed. Further, project costs and FLP project contributions may be in flux until a grant closes. Therefore, it is imperative to update these project entries once projects are fully completed and their grants are closed.

According to FS, the FLP Regional Coordinators are supposed to—although not specifically required to—review the information in FLIS three times each year to verify its accuracy: at the end of November, when the projects are due to be entered in FLIS; in February, after the release of the President’s budget request, in preparation for sending project materials to Congress; and at the end of the fiscal year (i.e., the end of September), when FS reports its accomplishments. FLP Regional Coordinators are also supposed to review the information in FLIS when a project closes. FS officials tell us that the agency is in the process of writing a formal policy to address the roles and responsibilities of the FLP Regional Coordinators.

The accuracy of the information in FLIS is critical to reporting program accomplishments to Congress. Because FLIS-generated program reports are used for reporting purposes, it is important that FS ensure the database’s integrity. Congress needs accurate and complete information in order to determine the FLP’s level of funding. Without accurate and complete information, FS cannot be certain that FLP is meeting its performance measures. If these performance measures are not met, FLP’s funding may be affected.

To ensure data accuracy and integrity, FS should require the FLP Regional Coordinators to cross-check the information in FLIS against the information in the project files and then to certify that the information is accurate and complete. The cross-check should occur at the critical times mentioned earlier. This requirement should be included in the formal policy FS is currently developing to address the roles and responsibilities of the FLP Regional Coordinators.

## **Recommendation 16**

Require the FLP Regional Coordinators to cross-check the information in FLIS against the information in the project files and then to certify that the information is accurate and complete. The cross-check should occur at the critical times specified in the finding above.

## **Agency Response**

FS concurs with this audit recommendation. The cross-checks will be built into the new version of FLIS, to be released by December 2011. FS’ estimated completion date for this action is March 2, 2012.

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<sup>43</sup> Where the government purchases the land outright from the landowner and therefore has absolute title to the land.

## **OIG Position**

We accept FS' management decision on this recommendation.

## **Recommendation 17**

Include the new requirement that FLP Regional Coordinators cross-check the information in FLIS against the information in the project files and then certify that the information is accurate and complete in the formal policy that FS is currently developing to address the roles and responsibilities of the FLP Regional Coordinators.

## **Agency Response**

FS concurs with this audit recommendation. FS' estimated completion date for this action is March 2, 2012.

## **OIG Position**

We accept FS' management decision on this recommendation.

## **Finding 6: Forest Legacy Program Needs A Standard Policy on Record Retention**

The FLP does not have a formal records-retention policy. Instead, each State determines which records to keep and for how long, and whether to retain them in hardcopy or electronic format. This inconsistency among States stems from the ambiguous wording of the records-retention language in the FLP Implementation Guidelines and from the Guidelines' lack of specificity regarding format. The Guidelines say that States must maintain permanent records for FLP properties, but do not specify which records must be kept permanently and only recommends—rather than requires—that certain documents be kept. FS believes that the existing wording regarding records retention is sufficient, but the States have interpreted the wording differently than FS intended, leading to differing understandings of records-retention requirements and recommendations. As a result of the lack of a formal national policy on records-retention and record format, there is no uniformity among FLP-participating States as to what type of documents they keep within project files or the length of time for which they keep them.

Appendix G, the section of the FLP Implementation Guidelines dealing with records retention, notes: “Since Forest Legacy acquisitions are perpetual, record keeping is important,” and says: “Each State shall maintain permanent records for all Forest Legacy properties.” However, the strength of the latter statement is diluted by the fact that the appendix does not specify which particular records must be kept in perpetuity. Diluting it further still is the wording that precedes its list of documents; it only recommends—rather than requires—that these records be kept: “The following information is recommended to be maintained by the conservation easement holder [i.e., the State].” Among the items included in the list are the deed of conservation agreement, baseline documentation, option agreement, appraisal, appraisal review, copies of grant reimbursements or expenditures, landowner correspondence, and monitoring records and history. The list does not include the appraisal for land or interests in land donated for cost-sharing purposes, or copies of the certification of value for such land. (See Finding 1 for more on appraisals and certification of value for donated land or interests in land.) Despite the importance of appraisal instructions in determining appraisal values, the FLP Implementation Guidelines also do not include appraisal instructions among the documents recommended for retention. As a result, almost half of the 26 project files we reviewed were missing a copy of the appraisal instructions.

Appendix G of the FLP Implementation Guidelines also states: “Each State shall maintain permanent records for all Forest Legacy properties.” However, we found that FS and the States seem to have different impressions as to which specific materials need to be kept permanently. FLP staff indicated that the program is experiencing issues with archiving project documentation. For example, one State official told us that State law required appraisals and appraisal reviews to be kept up to 7 years. In contrast, FS appraisal staff said that FS policy dictates keeping appraisals for 5 years and subsequently retaining only the appraisal review. As a result, of the 26 project files we reviewed, we found multiple instances of missing appraisals and appraisal reviews (4 missing appraisals and 2 missing appraisal reviews).

As the number of FLP projects increases, it is imperative that both FS and the States keep adequate project records to ensure that the program can accurately track, monitor, and report the status of the FLP projects. FS is currently revising its records-retention policy and issued an

interim directive in July 2009 requiring that all FLP records be kept until the final directive comes out. The interim directive outlines the records-retention policy for all FLP documents. Currently, all of the documents specified above (except for the appraisal instructions, appraisals for land donated for cost-sharing purposes, and the State's certification of value for the donated land) are required to be kept permanently until more detailed guidance is provided. In addition, all records will be kept in hardcopy format until the agency develops an approved policy on retaining electronic documents as official records.

To ensure its long-term ability to accurately track, monitor, and report on the status of the FLP, FS needs to finalize its records-retention policy for the program. However, FS will first need to amend its records-retention policy to require that permanent copies of the appraisal instructions, appraisals for land donated for cost-sharing purposes, and the State's certification of value for the donated land also be kept. FS also needs to provide the States with additional guidance on which project records they are required to maintain, for what duration, and whether the records should be kept in hardcopy format or electronically. FS should also review each State's FLP records-retention system during the 5-year review it conducts for each State to ensure that the States are in compliance with FS' records-retention requirements.

### **Recommendation 18**

Amend the interim FLP records-retention policy to require that FS also keep permanent copies of appraisal instructions, appraisals for land or interests in land donated for cost-sharing purposes, and the State's certifications of value for donated land or interests in land.

### **Agency Response**

FS generally concurs with this audit recommendation. On October 19, 2010, FS issued an interim records keeping directive for the FLP, which requires that all FLP project files be kept permanently. The FLP records retention policy, along with other FS records retention policies, is currently at the National Archives and Records Administration for review and approval. Once the Archivist of the United States has approved all FS codes, the agency will issue final direction for FLP. For now, the current interim directive will remain in effect until NARA approves the codes. The records retention policy will not require that FS permanently retain copies of the appraisal instructions nor appraisals for donated lands or interest in lands. This recommendation is contrary to FS's record keeping directives on appraisals (FSH 6209.11, chapter 40) and inconsistent with FLP policy on "certification of value" (see response to Recommendation 4). The *Uniform Appraisal Standards for Federal Land Acquisition* requires that "any written legal instructions received by the appraiser must be included in the appraisal report." For Federal acquisition, FS directives require the review appraisal, and not the appraisal with the appraisal instructions, be permanently retained. To be consistent with the record keeping practices of the agency's Federal acquisition program, the FLP will require that the review appraisal be retained by the FS and the State retain both the appraisal (with instructions) and review appraisal. FS' estimated completion date for this action is March 2, 2012.

### **OIG Position**

We accept FS' management decision on this recommendation.

## **Recommendation 19**

Finalize the FLP records-retention policy.

### **Agency Response**

FS generally concurs with this audit recommendation. On October 19, 2010, FS issued an interim records keeping directive for the FLP, which requires that all FLP project files be kept permanently. The FLP records retention policy, along with other FS records retention policies, is currently at the National Archives and Records Administration for review and approval. Once the Archivist of the United States has approved all FS codes, the agency will issue final direction for FLP. For now, the current interim directive will remain in effect until NARA approves the codes. FS' estimated completion date for this action is March 2, 2012.

### **OIG Position**

We accept FS' management decision on this recommendation.

## **Recommendation 20**

Provide additional guidance to the States on which project records they are required to keep and for what duration and whether these records should be kept in hardcopy format or electronically.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance to States on which project records they are required to keep and for what duration. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS' management decision on this recommendation.

## **Recommendation 21**

Review each State's FLP records-retention system during the 5-year review that FS conducts for each State to ensure that the State complies with FS' records-retention requirements.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on ensuring that the 5-year program reviews include a review of the States records-retention system. FS' estimated completion date for this action is December 30, 2011.

## **OIG Position**

We accept FS' management decision on this recommendation.

## Section 4: Conservation Easement Agreement

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### Finding 7: FS Needs to Provide Guidance to States to Standardize the Terms of Conservation Easements

FS provides limited guidance to the States as to how to develop the language for FLP conservation easements<sup>44</sup> and does not require a thorough review of these easements during or after the development process. In the absence of guidance from FS, States are left to independently develop their own easement templates. Once States finish drafting easements, the practices for reviewing them vary from one FS region to another. We found that one region's FLP Regional Coordinator thoroughly reviewed easements prior to their being finalized by the State, whereas another provided only a cursory review. This inconsistency has occurred because the FLP Implementation Guidelines provide few examples of conservation easement language and do not establish any direction as to how FS regions should review easements prior to project closings. As a result of this lack of guidance and direction, and in combination with the decentralized nature of FS and the FLP, there is no uniformity in how States draft their easements or in how the FS regions review them, and FS therefore has no assurance that these easements contain terms most effective for FLP purposes.

The FLP Implementation Guidelines provide few examples of language for conservation easements, including only examples of a purpose and authority clause<sup>45</sup> and examples of a reversionary clause.<sup>46</sup> The Guidelines also do not direct FS regions to review State-drafted conservation easements.

State officials, with whom we spoke, expressed the need for more guidance regarding conservation easements. One official indicated that there is little standardization of conservation easements and that the FLP Implementation Guidelines are vague regarding conservation easements. Essentially, each State we visited had developed its own unique conservation easement template without FS guidance, so there was no assurance that easements based on these templates would consistently and accurately reflect FLP requirements. Half of the States we visited expressed a need for more guidance from FS.

Because the FLP Implementation Guidelines do not provide direction regarding reviews of States' conservation easements, each FS region decides for itself how to review easements. In talking to FLP Regional Coordinators, we found that—as noted earlier—two regions had very different practices. One Regional Coordinator thoroughly reviewed conservation easements before they were finalized by the State, whereas another provided only a cursory review. The value of an easement as a conservation tool depends on its quality and the restrictions it contains. Because FLP staff are not always involved in reviewing conservation easements during the

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<sup>44</sup> In this section, "conservation easement" should be understood as the legal agreement—i.e., the deed of conservation agreement—that places an easement on a piece of property. Elsewhere in this report, "conservation easement" is used to describe the land itself.

<sup>45</sup> The purpose and authority clause ensures that the conservation values of the property are consistent with the goals of the FLP and that the acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, as amended by section 1217 of the Food, Agricultural, Conservation and Trade Act of 1990 (104 Stat. 3528; 16 U.S.C. Section 2103c).

<sup>46</sup> The reversionary clause ensures that the easement holder acknowledges that the easement was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed of, except as provided in Section 5.A, unless the United States is reimbursed the market value of the interest in land at the time of disposal.

drafting process, they miss the opportunity to provide guidance to the States to ensure the objectives of the FLP are met.

According to FS, the best defense against the possibility of an easement facing legal challenge is for the easement to be well-drafted. Therefore, it is imperative for FS to provide adequate oversight of the States' development of the easement document. FS' Northeastern Area for State and Private Forestry has recognized the States' need for clarification regarding conservation easement requirements and created a conservation easement review checklist that is much more thorough than the FLP Implementation Guidelines and provides better guidance to the States.<sup>47</sup> However, this checklist is used only within the Northeastern Area, and the FS regions do not issue similar checklists to their respective States.

Because the checklist provides additional guidance needed on the drafting of conservation easements, we recommend that FS use the Northeastern Area's checklist as a basis for developing a national checklist to be used in all regions for the development of FLP conservation easements. To develop the checklist, FS should solicit input both from FS FLP Regional Coordinators and State FLP coordinators regarding any additional critical elements that should be included in all easements and should incorporate these elements into the checklist.

To ensure that FLP conservation easements contain stipulations that are of the most benefit to the program and to provide guidance to the participating States, FS should also develop and implement a national conservation easement review policy that specifies the level of review that FS will conduct on easements. At a minimum, the policy should require: (1) State FLP coordinators and FS FLP Regional Coordinators to discuss the easement requirements and the State's plans prior to drafting the easement, and (2) FS FLP Regional Coordinators to conduct a comprehensive review of the easement once drafted to ensure that the final easement best meets program requirements, is understandable, and can be easily implemented and monitored. Finally, FS should revise the FLP Implementation Guidelines to include both the national policy for reviewing conservation easements and the corresponding checklist. These changes would ensure that conservation easements provide the maximum conservation value for the FLP funds invested in the projects.

## **Recommendation 22**

Develop a checklist—based on the one created by the Northeastern Area—to be used in all regions for the development of FLP conservation easements. Solicit input from FLP Regional Coordinators and State personnel for additional critical elements that should be included in all easements and incorporate these elements into the checklist.

## **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance through a checklist approach for the

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<sup>47</sup> The Northeastern Area's checklist covers the following conservation easement terms: purpose provision; reversion provision; assignment language; prohibition on subdivision; prohibition of industrial, commercial, and residential use of the property; prohibition on surface disturbances such as mining or drilling; duties of owners; requirement for development of and adherence to a Forest Stewardship Plan or Multi-Resource Management Plan; and language ensuring that compatible non-forest use occupies not more than 25 percent of the property.

development of FLP conservation easements. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 23**

Develop and implement a national conservation easement review policy that specifies the level of review that FS will conduct on the easements. At a minimum, the policy should require: (1) State FLP coordinators and FS FLP Regional Coordinators to discuss the easement requirements and the State's plans prior to drafting the easement, and (2) FS FLP Regional Coordinators to conduct a comprehensive review of the easement once drafted to ensure that the final easement best meets program requirements, is understandable, and can be easily implemented and monitored.

### **Agency Response**

FS concurs with this audit recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on specific levels of review that FS will conduct on conservation easements. FS' estimated completion date for this action is December 30, 2011.

### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 24**

Revise the FLP Implementation Guidelines to include both the national policy for reviewing conservation easements and the corresponding checklist.

### **Agency Response**

FS concurs with this audit recommendation. Developing the FLP Guidelines will require about two years to complete because it requires a team to develop a revised guidance, solicit public input, review and respond to comments, and then finalize the FLP Guidelines. In the interim, FS will develop a workplan by May 31, 2011, initiate a technical team and begin preliminary discussions by July 29, 2011, and solicit State and R/A/I input into how to improve the FLP Guidelines by December 30, 2011. FS' estimated completion date for this action is March 2, 2012.

### **OIG Position**

We accept FS' management decision on this recommendation.

## Scope and Methodology

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The purpose of our review was to assess the effectiveness of FS' Forest Legacy Program. To do that, we reviewed aspects of the program that included: (1) project selection and eligibility, (2) appraisal and appraisal review, (3) non-Federal cost-sharing requirements, and (4) conservation easement monitoring. The scope of our review included projects from inception of the program in 1990 to the present.

To accomplish our audit objectives, we performed audit work at FS' Washington office in Washington, D.C.; the FS State and Private Forestry Northeastern Area office in Newtown Square, Pennsylvania; the FS Forestry Sciences Laboratory in Durham, New Hampshire; and the FS Intermountain Regional Office in Ogden, Utah (see exhibit A). We also visited State offices in Maine, Massachusetts, Utah, and Montana that administer the FLP. Additionally, we visited selected projects in Massachusetts, Utah, and Montana. Fieldwork was performed between December 2008 and June 2010.

We selected the Northeastern Area for review because it had the largest number of FLP projects and associated FLP funding. It also had two of the four largest projects in terms of FLP funding. We also selected Regions 1 (Northern Region) and 4 (Intermountain Region)<sup>48</sup> because they had the other two largest projects in terms of FLP funding and the third largest number of FLP projects and associated FLP funding. Together, the Northeastern Area and Regions 1 and 4 accounted for more than 56 percent of the total projects in the FLP and 59 percent of the FLP funding during FYs 2005 through 2008. The States we selected within the Northeastern Area and Regions 1 and 4 were primarily those with the longest tenure in the FLP program and therefore with the most projects and FLP funding. Within the selected States, we reviewed a total of 26 projects.<sup>49</sup> The projects were judgmentally selected based on a number of factors including the amount of FLP funding the project received, the number of acres the project protected, and the project's completion date.

In developing findings for this report, we performed the following steps and procedures:

At FS' Washington Office:

- Obtained and reviewed all applicable laws, regulations, policies, and procedures pertaining to the FLP.
- Interviewed key FS Washington office staff, including the Assistant Director for Cooperative Forestry and the FLP National Coordinator.
- Interviewed the FS Chief Appraiser to understand the appraisal and appraisal review process for the program.

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<sup>48</sup> We reviewed the two regions concurrently since they shared the same FLP Coordinator, who was stationed at the Intermountain Regional Office in Ogden, Utah.

<sup>49</sup> Since its inception, the FLP has funded over 70 projects within the selected States. Since many of the projects have multiple phases in which each phase is independently approved and funded (i.e., each phase represents a different tract of land), we counted each phase of a project as a separate project. Therefore, the 26 selected projects could consist of one or more phases of the same project.

- Evaluated prior reviews, studies, and analyses that FS and other Federal and non-Federal entities conducted related to the FLP.

At Selected Regional Offices (see Exhibit A):

- Interviewed key FS regional office staff, including the Regional FLP Coordinator and Regional Appraiser, to determine their roles and responsibilities for the FLP. Also interviewed Regional FLP Coordinators from FS regions not selected for review in order to further understand issues pertaining to the FLP.
- Obtained and reviewed regional directives and policies developed for the FLP.
- Obtained and reviewed statistics on the region's FLP projects.

At Selected State Offices (see Exhibit A):

- Interviewed key State office staff, including the State FLP Coordinator, to determine their roles and responsibilities for the FLP.
- Obtained and reviewed statistics on the state's FLP projects.
- For judgmentally selected projects, obtained and reviewed key project documentation such as the appraisal and appraisal review, grant documentation, and conservation easement monitoring reports.

At Selected Projects (see Exhibit A):

- Toured the project to gain an understanding of the conservation issues related to the project. Also, for one project, interviewed the land trust party associated with the project to further understand its role in the FLP.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Abbreviations

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CFR.....	Code of Federal Regulation
FLIS .....	Forest Legacy Information System
FLP.....	Forest Legacy Program
FS .....	Forest Service
FTE .....	Full-Time Equivalent
FY .....	Fiscal Year
IRS .....	Internal Revenue Service
NGO.....	Non-Governmental Organization
NRCS .....	National Resources Conservation Service
OIG .....	Office of Inspector General
OMB .....	Office of Management and Budget
QAI .....	Quality Assurance Inspection
USDA.....	U.S. Department of Agriculture
USPAP .....	Uniform Standards of Professional Appraisal Practice
WRP.....	Wetlands Reserve Program

## Exhibit A – Audit Sites Visited<sup>50</sup>

Audit Site	Location
<p><b><u>FS Offices</u></b></p> <p>Washington Office</p> <p>Northeastern Area for State and Private Forestry</p> <p>Louis C. Wyman Forestry Sciences Laboratory</p> <p>Intermountain Regional Office</p>	<p>Washington, DC</p> <p>Newton Square, PA</p> <p>Durham, NH</p> <p>Ogden, UT</p>
<p><b><u>State Offices</u></b></p> <p>Maine Department of Conservation, Bureau of Parks and Lands</p> <p>Massachusetts Department of Conservation and Recreation</p> <p>Montana Department of Fish, Wildlife, and Parks</p> <p>Utah Division of Forestry, Fire, and State Lands</p>	<p>Augusta, ME</p> <p>Boston, MA, and Clinton, MA</p> <p>Helena, MT</p> <p>Salt Lake City, UT</p>
<p><b><u>Projects</u></b></p> <p>Ballard Hill</p> <p>Swan Valley</p> <p>Summit Park</p>	<p>Ballard Hill, MA</p> <p>Swan Valley, MT</p> <p>Summit Park, UT</p>

<sup>50</sup> This exhibit shows all sites visited including FS offices, State Offices, and project sites.

## Exhibit B – Forest Legacy Information System Discrepancies<sup>51</sup>

State/Project	Acres Per FLIS (A)	Acres Per State (B)	Difference (A - B)	Total Project Cost Per FLIS (C)	Total Project Cost Per State (D)	Difference (C - D)	Total FLP Funding Per FLIS (E)	Total FLP Funding Per State (F)	Difference (E - F)
<b>Maine</b>									
West Branch Mt Blue Phase, Phase IIIA	46,817	46,832	(15)	\$20,849,200	\$20,657,145	\$192,055	\$19,647,145	\$19,657,145	(\$10,000)
Cupsuptic Lake	1,272	1,272	0	\$843,000	\$843,000	\$0	\$843,000	\$843,000	\$0
Machias River, Phase I	6,316	6,124	(192)	\$2,903,040	\$3,184,236	(\$281,196)	\$1,987,000	\$1,975,300	\$11,700
Katahdin Ironworks	37,000	37,000	0	\$9,870,000	\$9,870,000	\$0	\$4,434,000	\$4,434,000	\$0
Nicatous	20,268	20,268	0	\$4,500,000	\$4,450,000	(\$50,000)	\$3,000,000	\$3,000,000	\$0
<b>Massachusetts</b>									
Ballard Hill	33	39	(6)	\$265,000	\$265,000	\$0	\$89,500	\$89,500	\$0
Belmont Springs	255	255	0	\$2,600,000	\$2,600,000	\$0	\$1,383,000	\$1,383,000	\$0
Boudreau	56	56	0	\$321,000	\$321,000	\$0	\$240,750	\$321,000	(\$80,250)
Karner Brook Ridge Mt. Washington High Rock	213	213	0	\$1,000,000	\$950,000	\$50,000	\$303,000	\$303,000	\$0
Muschopauge Brook	106	108	(2)	\$630,000	\$630,000	\$0	\$395,000	\$395,000	\$0
Pippin Tree	73	73	0	\$4,300,000	\$4,300,000	\$0	\$1,500,000	\$1,500,000	\$0
<b>Utah</b>									
Chalk Creek South Fork Phase II	1,022	1,022	0	\$1,320,000	\$1,320,000	\$0	\$957,219	\$957,219	\$0
Panguitch	935	935	0	\$1,530,000	\$1,530,000	\$0	\$1,500,000	\$1,500,000	\$0
Castle Rock, Phase III	4,870	4,868	2	\$4,870,000	\$4,870,000	\$0	\$1,977,000	\$1,977,000	\$0
Coalville, Phase II	2,668	2,668	0	\$2,335,000	\$2,335,000	\$0	\$1,900,000	\$1,900,000	\$0
Range Creek (Allred)	837	837	0	\$370,000	\$370,000	\$0	\$370,000	\$370,000	\$0
Range Creek (Jenson)	839	839	0	\$217,425	\$217,425	\$0	\$217,425	\$217,425	\$0
Summit Park	325	325	0	\$1,600,000	\$1,600,000	\$0	\$800,000	\$800,000	\$0
<b>Montana</b>									
Thompson Fisher, Phase II	52,935	52,935	0	\$11,999,156	\$11,999,156	\$0	\$3,794,633	\$3,794,633	\$0
Thompson Fisher, Phase III	31,671	31,671	0	\$7,891,672	\$7,891,672	\$0	\$7,000,000	\$7,000,000	\$0
Schiemann	238	216	22	\$792,000	\$950,000	(\$158,000)	\$417,000	\$950,000	(\$533,000)
Swan Valley State Forest , Phase I	3,520	6,083	(2,563)	\$3,953,000	\$3,950,667	\$2,333	\$2,963,000	\$2,963,000	\$0
Swan Valley State Forest, Phase III	572	480	92	\$3,678,667	\$3,085,920	\$592,747	\$2,759,000	\$2,314,440	\$444,560
Swan Valley State Forest, Phase V	320	320	0	\$2,668,000	\$2,560,237	\$107,763	\$1,979,000	\$1,979,000	\$0
<b>Totals</b>	<b>220,528</b>	<b>222,815</b>	<b>(2,287)</b>	<b>\$96,055,860</b>	<b>\$95,453,906</b>	<b>\$601,954</b>	<b>\$63,023,372</b>	<b>\$63,202,362</b>	<b>(\$178,990)</b>

Number of Projects with Acreage Differences	<b>9 projects</b>	<b>= 34.62%</b>
Number of Projects with Total Cost Differences	<b>10 projects</b>	<b>= 38.46%</b>
Number of Projects with FLP Funding Differences	<b>6 projects</b>	<b>= 23.08%</b>
Number of Projects with At Least One Difference	<b>15 projects</b>	<b>= 57.69%</b>

<sup>51</sup> This exhibit shows the difference in acreage, project cost, and total FLP funding per FLIS versus the State.

**USDA'S**

**FOREST SERVICE'S**

**RESPONSE TO AUDIT REPORT**



Forest  
Service

Washington  
Office

1400 Independence Avenue, SW  
Washington, DC 20250

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**File Code:** 1430

**Date:** March 4, 2011

**Route To:**

**Subject:** Response to Office of the Inspector General Official Draft Report Number 08601-56-SF, "Forest Service's Forest Legacy Program"

**To:** Gil H. Harden, Assistant Inspector General for Audit, Office of Inspector General

The Forest Service has reviewed the Office of the Inspector General (OIG) draft Audit Report No. 08601-56-SF, Forest Service's Forest Legacy Program. The agency appreciates OIG's review of its' Forest Legacy Program and activities. The Forest Service generally agrees with the findings and recommendations and the need to address these issues.

The enclosed response outlines our proposed actions for each of the audit recommendations. Please contact Donna Carmical, Chief Financial Officer, at (202) 205-1321 or [dcarmical@fs.fed.us](mailto:dcarmical@fs.fed.us) with any questions.

*/s/ Thomas L. Tidwell*  
THOMAS L. TIDWELL  
Chief

Enclosure

cc: Kathryn J Conant  
Ted Beauvais  
Paul Ries  
Sandy T Coleman  
Erica Y Banegas



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**USDA Forest Service (FS)**

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**Office of Inspector General (OIG) Official Draft Audit Report No. 08601-56-SF  
Forest Service Forest Legacy Program**

**FS Response to Official Draft Report**

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**OIG Recommendation 1: Provide the States with additional guidance on what steps they should take in order to certify the value of the donated land or interests in land. At a minimum, this guidance should require participating States to verify the qualifications for appraisers who conduct appraisals for donated land or interests in land.**

**FS Response to Recommendation 1:** The FS generally agrees with this recommendation. The Deputy Chief for State and Private will issue a letter to the Regions/Northeastern Area/ International Institute of Tropical Forestry (R/A/I) and States providing guidance on certifying the value of donated lands or interest in lands used as match for a Forest Legacy Program (FLP) grant, consistent with 7 CFR 3016.24. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

This guidance will not require that the States verify appraiser qualifications. The FLP requires a State to ensure an appraiser meets FLP qualifications, but only when FLP funds are involved. For donations, the IRS has requirements that govern the qualifications of appraisers who develop a value for charitable contributions by landowner. It is not appropriate to require a State to determine if the appraiser complies with these IRS requirements. Therefore, we will provide guidance to States on their obligation to certify value of cost share, including the value of donated lands or interest in lands, but not require that they determine if an appraiser, working for a landowner, complies with IRS requirements.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation 2: Clarify to the States what is meant by the “certification of value” for donated land or interests in land.**

**FS Response to Recommendation 2:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on certifying the value of donated lands or interest in lands used as match for a FLP grant, consistent with 7 CFR 3016.24. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 3:** Require States to submit the “certification of value” to the appropriate FLP Regional Program Manager and maintain a copy of this certification in the State’s file for the project.

**FS Response to Recommendation 3:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on certifying the value for cost share, including donated lands or interest in lands used as match for a FLP grant, consistent with 7 CFR 3016.24, and retain those supporting documents in the State’s files. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 4:** Require States to support their “certification of value” for donated land or interests in land by retaining in the State’s file for the project a copy of the appraisal obtained by the landowner, as well as any other documentation supporting the State’s “certification of value.”

**FS Response to Recommendation 4:** The FS generally agrees with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on certifying value for cost share including any donated lands or interest in lands, and retain those supporting documents in the State’s files. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

This guidance will not require that the State obtain a copy of the landowner’s appraisal for donated land or interest in land. The 7 CFR 3016.24 does not require an appraisal to be completed but rather requires the grantee to obtain documents they feel necessary to verify sufficient cost share was provided, which may include the market value as set by an independent appraiser, and that value certified by the grantee. The FS will not require the State to acquire a copy of an appraisal that is neither their property nor paid for by them. An appraisal obtained by

the landowner may not be willingly provided and may not be consistent with the State's grant and real estate procedures.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 5:** Verify that the States have the required documentation to support their "certifications of value" during the program reviews that FS conducts every 5 years at the State level.

**FS Response to Recommendation 5:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on ensuring that the 5-year program reviews include review of documentation by the States for certification of value. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 6:** Develop a risk-based approach for determining the number of appraisal reviews that should be conducted by Federal appraisers each year. In addition to considering each project's dollar value, this risk-based approach should also consider the complexity of the project's appraisal, the availability of qualified appraisers in the State, and the problems that FS found when conducting the most recent QAI of the State's appraisal process.

**FS Response to Recommendation 6:** The FS concurs with this recommendation, and will take the following actions:

- Conduct a meeting with the FS appraisers to consider how best to establish a risk-based approach by June 30, 2011.
- Develop a strategy for determining the number of appraisal reviews that should be conducted by Federal appraisers each year by March 2, 2012, which takes into consideration each project's dollar value, the complexity of the project's appraisal, the availability of qualified appraisers in the State, and the problems that FS found when conducting the most recent QAI of the State's appraisal process..

**Estimated completion Date:** March 2, 2012

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**OIG Recommendation No. 7: Complete the required number of QAIs each year by reprioritizing existing resources. For example, train other FS appraisers not currently assigned to the FLP to also perform QAIs.**

**FS Response to Recommendation 7:** The FS concurs with this recommendation. The agency completed the required number of QAIs in FY2010, and is on track to complete the required number of QAIs for FY2011 by September 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 8: Prioritize the remaining States that have not undergone QAIs in order to focus on those that have had the least amount of involvement by FS appraisal staff and/or received the highest levels of funding.**

**FS Response to Recommendation 8:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process in order to focus on those that have had the least amount of involvement by the FS and received the highest levels of funding. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 9: Require States to respond to recommendations made in the QAI within a reasonable time period (e.g. 60 days), including time frames as to when the actions recommended will be completed and providing a detailed reasoning when the State does not agree with a recommendation.**

**FS Response to Recommendation 9:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to include timeframes as to when the actions recommended will be completed and providing a detailed reasoning when the States does not agree with a recommendation. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 10: Provide the appraiser that conducted the QAI a copy of the State's response and confirm that the State's actions will satisfy the recommendations.**

**FS Response to Recommendation 10:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to ensure that a copy of State's response is provided to the appraiser to get their professional opinion on the adequacy of the State's response. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 11: Require FLP Regional coordinators to submit semi-annual progress report on the status of the recommendations made in a QAI until all of the recommendations have been implemented.**

**FS Response to Recommendation 11:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to ensure that the FLP regional managers submit semi-annual progress reports. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 12: Revise the Quality Assurance Plan to specify the time frame in which a State must respond to the recommendations in a QAI, time frames for implementing recommendations, and penalties for not complying with recommendations.**

**FS Response to Recommendation 12:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on the updated QAI process to include timeframes and penalties. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 13:** Develop a standardized tracking mechanism to allow FLP Regional Coordinators to track their respective States' progress in meeting the annual monitoring requirement.

**FS Response to Recommendation 13:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on a standardized tracking mechanism for annual monitoring requirements. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 14:** Require all States to submit annual monitoring reports to their respective FLP Regional Coordinators.

**FS Response to Recommendation 14:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance requiring the States to submit an annual report that addresses status of conservation easement monitoring, identifies any significant violations, and discusses how they plan to address the violations. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 15:** Assist the States in exploring tools to facilitate annual monitoring more efficiently, such as the use of satellite imagery or other technology, a risk-based system or a vulnerability-tailored system.

**FS Response to Recommendation 15:** The FS concurs with this recommendation. To accomplish this recommendation the FS will complete ongoing work and provide information and resources as new tools become available. The FS will address monitoring tools in various regional meetings being held throughout the year.

**Estimated completion Date:** March 2, 2012

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**OIG Recommendation No. 16:** Require the FLP Regional Coordinators to cross-check the information in FLIS against the information in the project files and then to certify that the information is accurate and complete. The cross-check should occur at the following critical times specified in the finding above (Finding 5).

**FS Response to Recommendation 16:** The FS concurs with this recommendation and these cross-checks will be built into the new version of FLIS, to be released by December 2011.

**Estimated completion Date:** March 2, 2012

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**OIG Recommendation No. 17:** Include the new requirement that FLP Regional Coordinators cross-check the information in FLIS against the information in the project files and then certify that the information is accurate and complete in the formal policy that FS is currently developing to address the roles and responsibilities of the FLP Regional Coordinators.

**FS Response to Recommendation 17:** The FS concurs with this recommendation and these cross-checks will be built into the new version of FLIS, to be released by December 2011.

**Estimated completion Date:** March 2, 2012

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**OIG Recommendation No. 18:** Amend the interim FLP records-retention policy to require that FS also keep permanent copies of appraisal instructions, appraisals for land or interests in land donated for cost-sharing purposes, and the State's certifications of value for donated land or interests in land.

**FS Response to Recommendation 18:** The FS generally concurs with this recommendation. On October 19, 2010, FS issued an interim records keeping directive for the FLP, which requires that all FLP project files be kept permanently. The FLP records retention policy, along with other FS records retention policies, is currently at the National Archives and Records Administration for review and approval. Once the Archivist of the United States has approved all FS codes, the agency will issue final direction for FLP. For now, the current interim directive will remain in effect until NARA approves the codes.

Note that the records retention policy will not require that FS permanently retain copies of the appraisal instructions nor appraisals for donated lands or interest in lands. This recommendation is contrary to the FS's record keeping directives on appraisals (FSH 6209.11 chapter 40) and inconsistent with FLP policy on "certification of value" (see response to Recommendation 4). The *Uniform Appraisal Standards for Federal Land Acquisition* requires that "any written legal instructions received by the appraiser must be included in the appraisal report." For Federal acquisition, the FS directives require the review appraisal, and not the appraisal with the appraisal instructions, be permanently retained. To be consistent with the record keeping practices of the agency's Federal acquisition program, the FLP will require that the review appraisal be retained by the FS and the State retain both the appraisal (with instructions) and review appraisal.

**Estimated completion Date:** March 2, 2012

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**OIG Recommendation No. 19: Finalize the FLP records-retention policy.**

**FS Response to Recommendation 19:** The FS generally concurs with this recommendation. On October 19, 2010, FS issued an interim records keeping directive for the FLP, which requires that all FLP project files be kept permanently. The FLP records retention policy, along with other FS records retention policies, is currently at the National Archives and Records Administration for review and approval. Once the Archivist of the United States has approved all FS codes, the agency will issue final direction for FLP. For now, the current interim directive will remain in effect until NARA approves the codes.

**Estimated completion Date:** March 2, 2012

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**OIG Recommendation No. 20: Provide additional guidance to the States on which project records they are required to keep and for what duration and whether these records should be kept in hardcopy format or electronically.**

**FS Response to Recommendation 20:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance to States on which project records they are required to keep and for what duration. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 21: Review each State’s FLP records-retention system during the 5-year review that FS conducts for each State to ensure that the State complies with FS’ records-retention requirements**

**FS Response to Recommendation 21:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance on ensuring that the 5-year program reviews include review the States records-retention system. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 22: Develop a checklist - based on the one created by the Northeastern Area - to be used in all regions for the development of FLP conservation easements. Solicit input from FLP Regional Coordinators and State personnel for additional critical elements that should be included in all easements and incorporate these elements into the checklist.**

**FS Response to Recommendation 22:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance through a checklist approach for the development of FLP conservation easements. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 23: Develop and implement a national conservation easement review policy that specifies the level of review that FS will conduct on the easements. At a minimum, the policy should require: (1) State FLP coordinators and FS FLP Regional Coordinators to discuss the easement requirements and the State’s plans prior to drafting the easement, and (2) FS FLP Regional coordinators to conduct a comprehensive review of the easement once drafted to ensure that the final easement best meets program requirements, is understandable, and can be easily implemented and monitored.**

**FS Response to Recommendation 23:** The FS concurs with this recommendation. The Deputy Chief for State and Private will issue a letter to the R/A/I and States providing guidance specific levels of review that the FS will conduct on conservation easements. To accomplish this task, the FS will:

- Initiate a technical team by April 29, 2011;
- Develop draft guidance for review by August 31, 2011; and
- Finalize guidance by December 30, 2011.

**Estimated completion Date:** December 30, 2011

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**OIG Recommendation No. 24: Revise the FLP Implementation Guidelines to include both the national policy for reviewing conservation easements and the corresponding checklist.**

**FS Response to Recommendation 24:** The FS concurs with this recommendation. Developing the FLP Guidelines will require about two years to complete because it requires a team to develop a revised guidance, solicitation of public input, review and response to comments, and then finalize the FLP Guidelines. In the interim, the FS will complete the following tasks:

- Develop a workplan by May 31, 2011;
- Initiate a technical team by July 29, 2011 and begin preliminary discussions; and
- Solicit State and R/A/I input into how to improve the FLP Guidelines by December 30, 2011.

**Estimated completion Date:** March 2, 2012