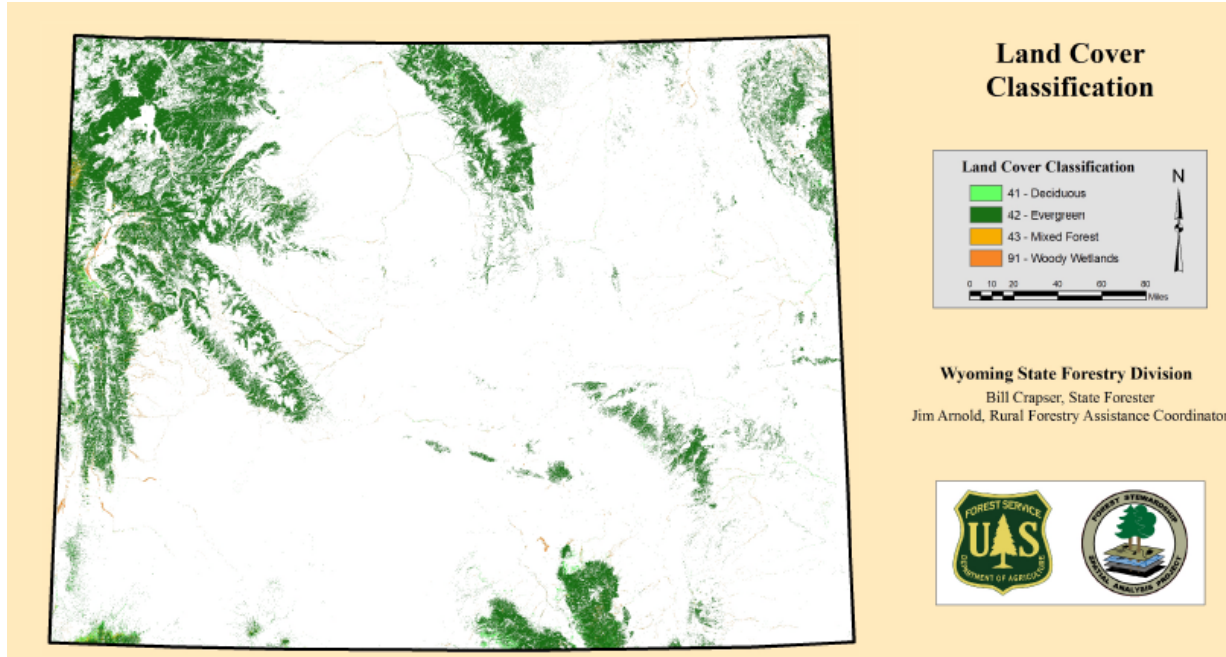


# FOREST LEGACY PROGRAM

## ASSESSMENT OF NEED FOR THE STATE OF WYOMING



September 21, 2007



**THE CONSERVATION FUND**

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## I. INTRODUCTION

### **Purpose of the Forest Legacy Program**

While the majority of Wyoming's productive forest lands are in public ownership (83%), private forested lands are playing an increasingly important role in providing timber products, wildlife habitat, and other publicly-important values to Wyoming's people.

Approximately 17% of Wyoming's forested lands are privately owned (including individuals, families, trusts, investment partnerships, mining interests, and forest products companies). These lands provide 73% of the timber harvest volume in the State. As documented in this report, private timber landowners are facing increased incentives to convert their forest lands to other uses, particularly recreational residential development. Furthermore, stand age and size classes are old, large and uniform enough to be vulnerable to disease and insect outbreaks.

As human population density increases in some areas of Wyoming, demands on forest land increase. The results include growing pressures on private lands to provide a wider variety of products and services, including subdivision lots, forests that are healthy and aesthetically pleasing, protection from wildfire risk, and active insect and disease control. Other economically important demands include fish and wildlife habitat, and recreational opportunities. Competing demands on forest uses are resulting in forest fragmentation, unhealthy forest land, and difficult fire management at the forest-urban interface.

Thoughtful protection of forest lands is important to maintain the balance and potential of Wyoming's forests. Good stewardship of these privately held forest lands requires a long-term commitment to sustainable forest management that can be fostered through a partnership of Federal, State, and local government efforts.

In the 1990 Farm Bill, the Forest Legacy Program (FLP) was one of several programs established to promote the long-term integrity and sustainable management of forestlands. The Secretary of Agriculture was directed to establish a Forest Legacy Program administered by the USDA Forest Service (USFS) in cooperation with State, regional, and other units of government. In carrying out this mandate, the Secretary has been authorized to provide funding for states to acquire interests in lands through conservation easements in perpetuity for inclusion in the Forest Legacy Program. The primary goal of the Forest Legacy Program is to identify and protect environmentally important forests from conversion to nonforest uses. Landowner participation in the Forest Legacy Program, including the sale of conservation easements, is entirely voluntary. For the proposed Wyoming program, timber harvesting is allowed on properties conserved through the Forest Legacy Program but must be done in compliance with a State Forest Stewardship Plan and Wyoming State Forestry's Best Management Practices for road construction and timber harvesting (BMPs).

## **Conservation Easements**

The Forest Legacy Program allows for the acquisition of conservation easements from willing sellers. A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values (such as its forest cover, ecological function, or scenic benefits). The conservation easement allows the landowner to continue to own the property and to use it for forestry and recreation, but restricts development and subdivision. The terms of the conservation easement are tailored to the characteristics of the property, the goals of the State of Wyoming in acquiring the conservation easement, and the objectives of the landowner. Under the Forest Legacy Program public access is not required; forest management activities are permitted as described in a Forest Stewardship Plan and consistent with the state BMPs. Hunting, fishing, hiking, and similar recreational activities are permitted if those activities are consistent with the goals for acquisition of the property. Activities that are not consistent with protection and conservation of the forest attributes of a property are generally not allowed. For example, mining that would disturb the surface of the property is not allowed, so landowners must identify the potential for surface mining and the condition of the split estate to be eligible for the program. The conservation easement is a permanent encumbrance on the property and future owners will be bound by the easement's terms. For these reasons, it is imperative that the Wyoming State Forestry Division (WSFD) and Wyoming State Forestry Stewardship Coordinating Committee (WSFSCC) adequately explain the implications of the proposed conservation easement to the interested participant. The landowner will draft the conservation easement with the WSFD and should seek legal counsel. The WSFSCC is responsible for making sure the conservation easement's terms are followed and can take action to restore damages to the property if there has been a violation of the easement.

Wyoming has chosen the State Grant option of the FLP, which means that conservation easements will be held by the State of Wyoming and enforced by the Wyoming State Forestry Division. The state may not sell or otherwise dispose of land interests in properties it has acquired using FLP funds without reimbursing the USFS or substituting lands of equal value and conservation benefit.

The acquisition of a fee simple interest in forested properties could also be undertaken with the Forest Legacy Program.

## **Enabling Legislation**

The Cooperative Forestry Assistance Act of 1978, as amended (16 U.S.C. 2101), provides authority for the U.S. Secretary of Agriculture to provide financial, technical, educational, and related assistance to States, communities, and private forest landowners. Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624, 104 stat. 3528), also referred to as the 1990 Farm Bill, amended the Cooperative Forestry Assistance Act and allows the Secretary to establish the Forest Legacy Program to protect environmentally important forest areas that are threatened by conversion to non-forest uses. This authority continues indefinitely. If the authority is revoked or the program ceases to be funded, existing Forest Legacy projects are not affected but no new projects will be solicited. Appropriations are

provided on an annual basis at Congressional discretion. The FY 2006 program funding was \$56.5 million for 40 projects nationwide.

Through the 1996 Farm Bill (Federal Agricultural Improvement and Reform Act of 1996; Public Law 104-127; Title III - Conservation; Subtitle G - Forestry; Section 374, Optional State Grants for Forest Legacy Program), the Secretary is authorized, at the request of a participating State, to make a grant to the State to carry out the Forest Legacy Program in the State, including the acquisition by the State of lands and interests in lands. Wyoming has requested the State Grant Option.

WSFD is the lead agency for the Forest Legacy Program in Wyoming (Appendix A). The Cooperative Forestry Assistance Act directs the Secretary to establish eligibility criteria for the designation of Forest Legacy Areas, in consultation with the WSFSCC (Appendix B). These eligibility criteria are developed based upon the Assessment of Need (AON) for establishing a State Forest Legacy Program.

The Wyoming Uniform Conservation Easement Act, Sections 34-1-201 through 34-1-207 of the Statutes of Wyoming, was signed into law in 2006 and enables the use of conservation easements. In addition, the qualifications of conservation easement holders and the public benefit requirements necessary for easement donations to be eligible for income tax deductions are defined in Section 501(c)(3) and 170(h) of the Internal Revenue Code of 1985.

### **Purposes of the Assessment of Need**

The Assessment of Need (AON) documents (1) the need for the Forest Legacy Program in Wyoming by describing the land use changes affecting forests and (2) how the program will be implemented by describing eligible areas and priorities. The required purposes of the AON are:

1. To document the need for a Forest Legacy Program in Wyoming;
2. To identify and delineate the boundaries of forest areas meeting the eligibility requirements for designation as Forest Legacy Areas; and
3. To recommend areas to the FS/Secretary for inclusion in the Forest Legacy Program.

This document meets those goals by identifying and assessing:

1. The condition and importance of Wyoming's forest resources, paying particular attention to those characteristics that will help guide implementation of the FLP (Section II);
2. The major threats of conversion to the forest resources and forest uses (Section III);
3. The most important areas for the implementation of the FLP and the eligibility criteria that were used to identify them (Sections V and VI); and,
4. The evaluation criteria that should be used for the selection of projects (Section VII).
5. This document also addresses some threats that are not effectively addressed through FLP (e.g. forest health impacts) but are important to consider in the overall context of forest management and conservation in Wyoming.

## **Preparation of the Assessment of Need**

The AON is being prepared by the WSFD, in consultation with the WSFSCC, for submission to the USDA Forest Service (USFS). A contract was issued to The Conservation Fund to produce the AON for the WSFD. The Conservation Fund has assembled a team to implement the contract, as shown below. The team members, primary roles, and key personnel are:

- The Conservation Fund – Project management, coordination with WSFD and WSFSCC, public participation, preparation of final mapping products.
  - Luke Lynch, Wyoming Field Representative, Project Leader
  - Evan Smith, Director of Forestry Projects, Forestry Consulting and analysis
  - Tom Segerstrom, Research, Drafting, Biological Consulting
- Wyoming Geographic Information Science Center: Shawn Lanning, GIS Research Scientist
- Greenwood Mapping
  - Rich Greenwood, mapping analysis and oversight
  - Angie Rudolph, map production

The AON was developed on the basis of existing published data, much of which is available on the Internet, as well as considerable Wyoming-based knowledge. We have attempted to document all relevant sources, but have not, in the interests of readability, used as many citations as one might find in a professional paper. We hope the resulting synthesis is a useful way to view Wyoming's privately owned forests, along with the opportunities and challenges facing the people who own and manage these forests.

The AON must be approved by the USFS prior to the release of project funds. Once approved by the USFS, the AON may be amended by WSFD, with approval by the WSFSCC and USFS, to reflect new information or priorities.