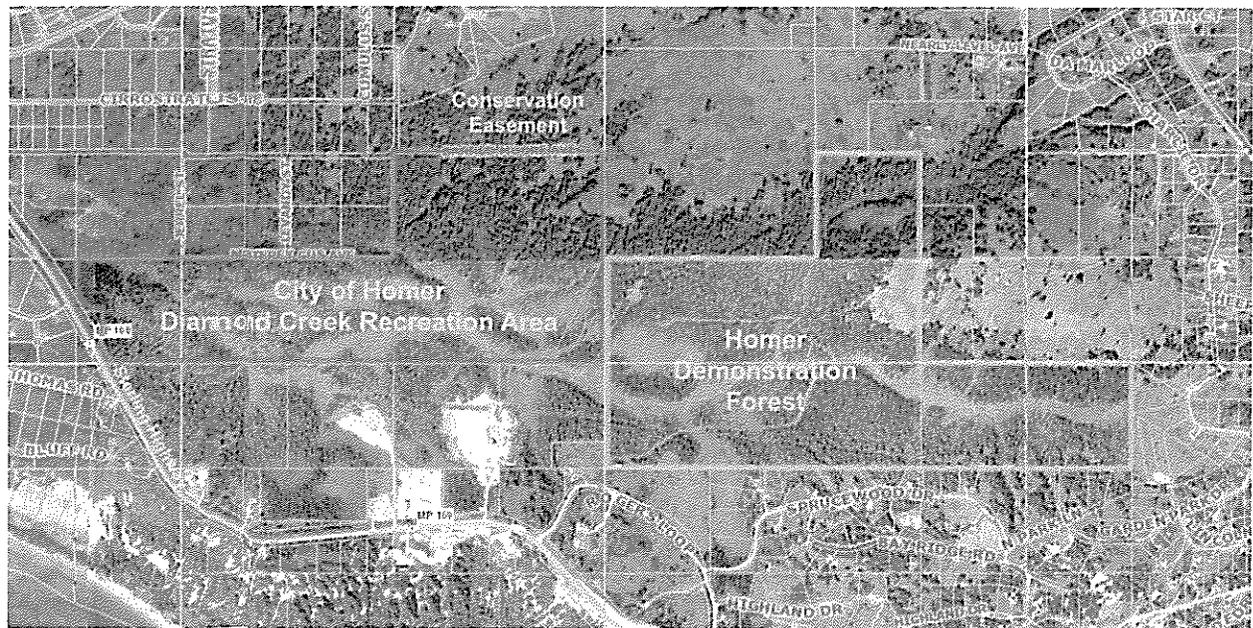


**For: Homer Parks and Recreation Commission, February 16, 2012,
Background information on the Diamond Creek Recreation Area (DCRA) plan
From: Homer Soil and Water Conservation District**



How was the Diamond Creek Recreation Area created?

In 2007, Kachemak Heritage Land Trust (KHLT) purchased the 270-acre Diamond Creek Recreation Area (DCRA) from the University of Alaska, in part with funds from the Forest Legacy Program (FLP). KHLT then transferred title to the DCRA to the City of Homer. (This process is called a “pass through.”) As part of the FLP process, the city then granted to the Alaska Department of Natural Resources (DNR) a conservation easement restricting the uses of the DCRA parcel to those consistent with the “purposes for acquiring the property.” Specifically, the conservation easement granted to DNR states:

...[T]he purposes for acquiring the... [DCRA] property include protecting environmentally important forest areas that are threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities, as well as the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values.”

Because KHLT used Forest Legacy Funds in the purchase of the DCRA, a plan that meets the requirements of the Forest Legacy Program is now required. The city requested assistance from the Homer Soil and Water Conservation District to develop that plan for the DCRA. This request stems in part from the fact that Homer Soil and Water has worked closely with both the state and the community in planning and managing the adjacent 360-acre Homer Demonstration Forest, which borders the DCRA on the east (see map above). (The Homer Demonstration Forest plan can be downloaded at: <http://www.homerswcd.org/forestry/prgms/HDFPlan107.pdf>.) Homer Soil and Water has now begun developing a plan for the DCRA that will meet FLP requirements.

Background on the Forest Legacy Program

(For more information, see <http://dnr.alaska.gov/parks/grants/flp.htm>.)

In 1990, the Forest Legacy Program (FLP) was established to promote the long-term integrity of forestlands. The program allows continued regular forest activities on lands that come under the program. These uses include timber harvesting, hunting, fishing, recreation, and other traditional uses.

The Secretary of Agriculture was directed to establish the FLP in cooperation with state, regional, and other units of government. The FLP identifies and protects environmentally important forestlands that are threatened by conversion to non-forest uses—such as residential subdivisions or commercial development. In carrying out this mandate, the Secretary is authorized to acquire lands (and interests in lands) in perpetuity for inclusion in the FLP. The FLP covers about 75 percent of the costs of a conservation easement or fee-title purchase, including the costs of appraisals, surveys, closing costs, title work and insurance, and other real estate transaction expenses. The other 25 percent must be matched by either the landowner or an assisting entity, such as a non-profit organization or non-federal government agency.

The FLP is implemented through state participation consistent with national FLP guidelines and as described in each State Assessment of Need (AON). The FLP goals and objectives are accomplished through the USDA Forest Service (FS) in cooperation with state partners, federal agencies, local units of government, forest landowners, and other partners. The state accepts FLP funds and administers its own program in accordance with its statewide Assessment of Need and Forest Legacy Area (FLA). Alaska's AON AND FLA ARE set forth in the [Alaska Forest Legacy Program Assessment of Need](http://dnr.alaska.gov/parks/grants/flp/ak-aon.pdf) (<http://dnr.alaska.gov/parks/grants/flp/ak-aon.pdf>), dated August 23, 2002. The Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, working in conjunction with the Forest Service, is the lead state agency for Alaska's FLP. Non-federal lands on the Kenai Peninsula are within the state's FLA. (See map below.)

Participation in the Forest Legacy Program is entirely voluntary. Landowners who wish to participate may either sell their property as fee simple title (all rights, both surface and subsurface), or sell only a portion of the property rights while retaining ownership of the land. A government agency—local, state or federal—must be willing to take title to the land OR to accept a conservation easement restricting uses of the parcel. Conservation easements are the vehicle used to transfer certain property rights in order to provide for certain land use restrictions (as stated in the conservation easement) while at the same time maintaining the forest intact to provide traditional forest uses.

Under terms of the Forest Legacy Program, a Stewardship Plan or a Multi-Resource Management Plan (MRMP) is required for each tract accepted into the program.

Forest Legacy Program Implementation Guidelines, June 30, 2003, USDA Forest Service, State & Private Forestry, Cooperative Forestry

PART 1 - GENERAL PROGRAM GUIDELINES

I. Authority and Purpose of the Forest Legacy Program (FLP)

A. Authority [not included here]

B. Purpose of the Forest Legacy Program

The purpose of the FLP is to ascertain and protect environmentally important forest areas that are threatened by conversion to non-forest uses.

FLP seeks to promote forestland protection and other conservation opportunities. Such purposes shall include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas, and other ecological values. Traditional forest uses, including timber management, as well as hunting, fishing, hiking, and similar recreational uses are consistent with purposes of the FLP. Both purchased and donated lands and interests in lands through the use of conservation easements and fee-simple purchase are used to acquire forested land meeting Forest Legacy purposes from willing sellers or donors.

II. Description of Terms and Abbreviations

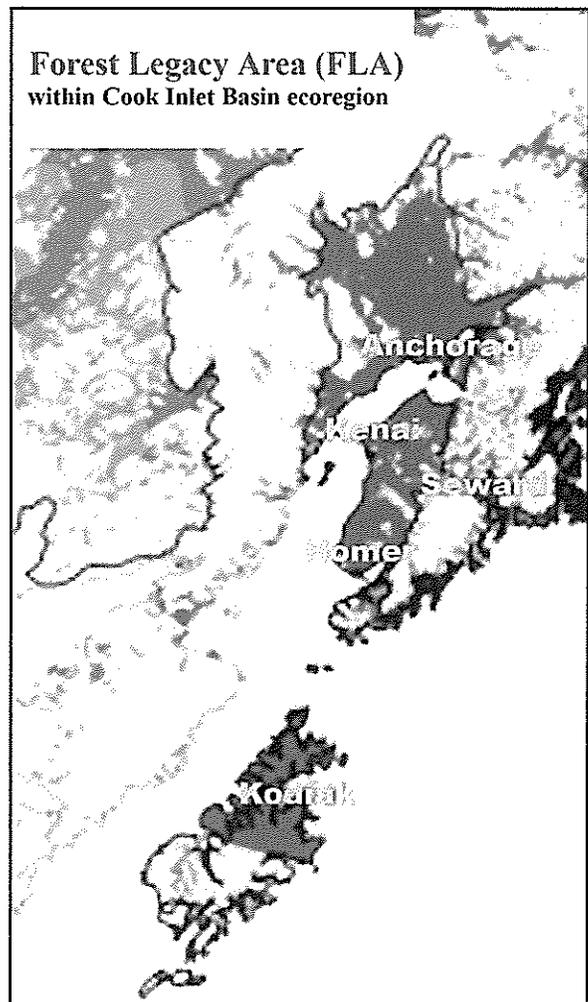
Conservation Easement is a legal agreement a property owner makes with a governmental entity or a nonprofit organization to restrict activities allowed on the land in order to protect specified conservation values. Easement restrictions are tailored to the particular property and to the interests of the individual landowner. All FLP conservation easements are held in perpetuity...

The FLP conservation easement holder (Federal, State or local government) is responsible to assure that baseline documentation contains all the information necessary to monitor, manage and enforce the easement.

Forest Legacy Area (FLA) is a geographic area with important forest and environmental values, that satisfies identified Eligibility Criteria and has been delineated, described, and mapped in a State's AON for the FLP. Acquisition of lands and interests in lands for the FLP can only occur within approved FLAs (see map...).

Forest Stewardship Plans, or multi-resource management plans, are prepared with the purpose of achieving long-term stewardship of forestland. Such plans identify landowner objectives and describe actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, and fish and wildlife resources, and other conservation values identified on the tract. Plans are to be prepared by a professional resource manager. A Forest Stewardship Plan that meets the requirements of the Forest Stewardship Program or a multi-resource management plan is required for FLP qualification. The State Forester or equivalent, or their designee must approve the plan. (See Appendix F for sample content of a Forest Stewardship Plan)...

Baseline documentation describes or depicts a tract of land and its attributes on the day it becomes restricted by an easement... Documentation of the property should include a map of the area drawn to scale showing all existing manmade improvements or incursions such as roads, buildings, fences or gravel pits; an aerial photograph of the property taken as close to the date the property is restricted as possible; and on-site photographs, especially of significant features. The above should be accompanied by narrative descriptions of tract attributes and other pertinent information.



Pass-through describes a land transaction whereby a third party, such as a land trust, acquires interests in lands with the intent to convey such interests to a unit of government. The transaction can include a full or partial donation, or sale at market value.

Reserved Areas are designated areas where non-forest uses (e.g. house, barn, remote recreation camps, etc.) are or will be allowed, but are inseparable from the land holding and do not have a detrimental effect on the conservation easement values. These areas shall be defined and described in the conservation easement and may be restricted in terms of their use, or provisions made through cost and time to cure and treatment. To the extent possible these areas of noncompliance should be excluded from the FLP project.

XVI. Conservation Easement Monitoring, Management, Record-Keeping & Enforcement

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. Such delegation or assignment of responsibility shall be documented by a written agreement. 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, and other governmental entities. Such delegation or assignment of authority shall be adequately documented and the FS shall be notified. The FS shall approve agreements involving any interests in lands held by the Federal Government prior to such delegation or assignment. Once interests in lands are acquired, the State lead agency, FS, and others as appropriate, may negotiate tract-specific Memorandums of Understanding (MOU) as necessary to specify management and monitoring responsibilities for the interests in lands.

Optimal management and monitoring of tracts in FLAs is based upon partnerships between landowners, private non-profit organizations owning or managing lands, and State and Federal officials. Land trusts and other private organizations will continue to manage and monitor their own easements and lands within designated FLAs, and while they may not manage government-owned interests in lands under the FLP, they may cooperate with or contract for monitoring and implement specific management activities. Management of federally owned interests in lands is reserved to the FS, but may be assigned to State or local governments, or another Federal agency through mutual agreement. Although delegable, enforcement actions for easements will generally be conducted by the easement holder, i.e., the State or the Federal Government.

Monitoring FLP conservation easements shall occur periodically, but not less than annually. Monitoring consists of visual inspection of the property, documented by a written report to explain the condition of the property at time of inspection. Any material departure from the baseline documentation report or Forest Stewardship Plan should be noted. The easement holder should immediately address any violation of the conservation easement with the landowner. The landowner should have the opportunity to correct the breach. After a reasonable time period (e.g. 30 days), if the breach is not corrected, enforcement action may be taken, including but not limited to, legal means. The unit of government holding the conservation easement has the initial responsibility to enforce the conservation easement. See Appendix G, Real Estate Record Keeping for suggestions on what information should be kept. The State or easement holder shall promptly notify any future FLP tract owner of the FLP and the origin and requirements of the conservation easement.

The Forest Stewardship Plans covering the tract shall be reviewed periodically and updated as needed. If there is a change in land ownership, then the Forest Stewardship Plan needs to be reviewed, and updated as needed.

APPENDIX F -- Sample Content of a Forest Stewardship Plan

From the Forest Stewardship Program's *National Standards and Guidelines*.

Please also refer to the Forest Stewardship Program's *Planning for Forest Stewardship: A Desk Guide*, as well as States' Statewide Forest Stewardship Plans for additional information on Forest Stewardship Plans.

Landowner Forest Stewardship Plans must:

- Be prepared or verified, as meeting the minimum standards of a forest stewardship plan, by a professional resource manager.
- Identify and describe actions to protect, manage, maintain and enhance relevant resources listed in the law (soil, water, range, aesthetic quality, recreation, timber, water, and fish and wildlife) in a manner compatible with landowner objectives.
- Be approved by the State Forester or a representative of the State Forester.
- Involve the landowner in the plan development by setting clear objectives; [the landowner] should understand clearly the completed plan.

A well prepared plan will:

- Clearly state landowner objectives.
- Have a cover page.
- Provide for authorship and/or signature lines within the document.

The plan preparer should consider and evaluate resource elements present and include a brief description of those that are applicable and their importance to the ownership. Resource elements to be considered are:

- Soil Interpretations
- Water
- Range
- Aesthetic Quality
- Recreation
- Timber
- Fish
- Wildlife
- Forest Health
- Archeological, Cultural and Historical Sites
- Wetlands
- Threatened and Endangered Species

Management recommendations, or where appropriate, alternative strategies should be provided for those resource elements described. Prescriptions or treatments should be integrated and stand or site specific. An ownership map drawn to scale, or photo, to include vegetation cover types, stream and pond location with a legend will enable the landowner to implement the plan. Landowners' understanding may be improved by including activity summaries and appendices.

Appendices might include:

- Description of assistance available and incentive programs
- Educational materials
- A glossary of terms
- An explanation of applicable Federal, State and /or county regulatory programs, especially as they apply to:
 - Archeological, cultural and historical sites.
 - Wetlands.
 - Threatened and Endangered Species.

These last three items are covered by legislation other than the Cooperative Forestry Assistance Act of 1978, as amended by title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2101, et seq.), but must be considered for Federally funded programs.

The professional resource manager should discuss the Forest Stewardship Plan with the landowner, following completion, to assure understanding.

APPENDIX G -- Real Estate Record Keeping

Since Forest Legacy acquisitions are perpetual, record keeping is important. Each State shall maintain permanent records for all Forest Legacy properties. The following information is recommended to be maintained by the conservation easement holder:

- A. Landowner information (name, address, phone)
- B. Nomination form (including notification to landowner that property will not be purchased if negotiations do not result in amicable agreement)
- C. Landowner Inspection Consent Agreement
- D. Baseline documentation
- E. Option agreement
- F. Deed of Conservation Agreement
- G. Additional warranty deeds, covenants, restrictions
- H. Title Insurance Policy
- I. Appraisal
- J. Appraisal review
- K. Forest Stewardship Plan or equivalent
- L. Notification of county or local government
- M. Closing statement
- N. Copies of check or documentation of EFT or other form of payment
- O. Copies of grant reimbursement or expenditure

The following items should also be maintained as part of the record:

1. Landowner correspondence
2. Evaluation criteria
3. Tracking/documentation of negotiation steps
4. State Forest Stewardship Coordinating Committee recommendation
5. Press release
6. Monitoring records/history

Other examples of baseline information

Scenic Features

- Official policies citing property's scenic value
- Number of people who frequent nearby public places (roads, trails, parks) from which they can view property

Archeological, Cultural and Historical Features

- Archeological, cultural and historical sites and resources found within the property

Human Created Features

- Improvements (structures, trails, fences, wells, power lines, pipelines, irrigation systems, etc.)
- Recreation/tourism attractions
- Trespass damage and disturbed land (stray animals, introduced species evidence of vehicular trespass, etc.)

Photographs

- Aerial photos, if appropriate
- On-site photos (be sure to record key photo points, record distance and azimuth from structures or other fixed points, and sign and date all photos)

Maps

- A state map showing easement location
- An 8 1/2" X 11" section of a local road map showing easement location
- The largest scale U.S. Geological Survey topographical map available (usually at a scale of 1:24,000, called a 7-1/2 minute scale), showing easement boundaries