

Procedure for Granting and Acquiring Easements
PROCEDURE NO.: ADM-7.0

Revision Date: February 2026

Procedures for Requests for Easements on Property owned by the Idaho Department of Fish and Game (Department) and for the Negotiation and Acquisition of Conservation, Public Access, and other Administrative Easements by the Department.

I. Purpose

The Department grants and acquires less-than-fee interest property rights to protect and sustain fish and wildlife populations, habitats, and associated recreation to support its mission to preserve, protect, perpetuate, and manage the fish and wildlife resources of the state. This guideline outlines a structured process to maintain a consistent approach, to clarify roles, establish credibility and accountability, and to involve interested stakeholders in easement requests and acquisition.

II. General Description

A. Background

The Idaho Fish and Game Commission Policy “Land Acquisition for Sustainable Fish and Wildlife Habitats and Recreation” (Approved January 17, 2003) directs the Department to “first consider alternatives to fee title acquisition. Such alternatives may include easements, management agreements, leases and exchanges or other methods that may be more appropriate to address local conditions and stakeholder objectives.” The guidelines provided in this document are intended to fulfill this direction with respect to granting and acquiring easements. These guidelines tier to the Department’s Land Acquisition for Sustainable Fish and Wildlife Habitats and Recreation POLICY NO. A-9.0 (hereafter, “Land Policy”).

An easement is the right to use the land of another for a specific purpose that is consistent with the general use of the property by the landowner. Conservation easements differ from other types of easements in that the holder (or Grantee) restricts activities rather than receiving rights from the landowner (or Grantor). Importantly, unlike other types of easements, all conservation easements must provide some documented public benefit.

B. Describing Easements

1. General Definition

An easement is the right to use or restrict, as in the case of a conservation easement, the property rights of another for a specific purpose that is consistent with the general use of the property by the owner.

2. Types of Easements

- a. **Ingress and Egress** – An agreement negotiated for ingress and egress to property over the property of another.
- b. **Maintenance** – A maintenance easement allows one landowner (i.e., the grantee) to cross onto the property of another (i.e., the grantor) for the purpose of maintaining something owned or controlled by the grantee.
- c. **Utility** – Utility easements are similar to maintenance easements and often involve the utility traveling over the grantor’s property.
- d. **Septic** – Sewer and water lines underground often require maintenance easements.
- e. **Water and/or Irrigation** – There are several types of irrigation easements including those for ditches and canals. Water easements can be utilized to control ground and surface water. Flowage easements can be considered a type of water easement in that these agreements, in general, provide the Department with the right to flood property to provide waterfowl habitat or create wetland habitat.
- f. **Railroad** – Railroad easements generally exist everywhere there is a railroad track over private property. Often the agreement is structured so the easement will revert to the original ownership if the railroad ceases to exist.
- g. **Mining** – These types of agreements are similar to reserving mining rights, meaning a grantee can reserve the rights to the minerals (including rock or gravel pits) on a grantor’s property.
- h. **Timber** – Timber easements are generally legal agreements allowing an entity or individual to access, cut, and remove timber from another person’s land.
- i. **Solar** – An agreement that protects a grantee’s property from the obstruction of a path of sunshine. This agreement is usually drafted with restrictive covenants that prevent the grantor from constructing buildings exceeding certain heights or restricting where improvements can be built.
- j. **Prescriptive Easement** – A prescriptive easement is an easement attained by adverse use. These easements are not favored by law. Generally, the claimant must submit proof of open, notorious, continuous, uninterrupted use, under claim of right, with full knowledge of the owner of the property for a prescriptive period of at least 20 years. Idaho follows the general rule that property held by the government cannot be acquired by adverse possession or prescription while title is vested in the government (adverse possession or prescriptive easement issues may arise before title is vested in the State).
- k. **Conservation Easement** - A conservation easement is a legal agreement between a landowner and an eligible organization that restricts the activities on the land to protect its conservation values. The Uniform Conservation Easement Act of 1981 (UCEA) enables qualified agencies and private conservation organizations to accept less-than-fee interests

in land for the purposes of conservation (Idaho State Code Title 55, Chapter 21). All conservation easements must provide some documented public benefit.

- l. Public Access** - Public access easements tend to be a combination of ingress and egress, maintenance and utility easements all-in-one. Sometimes these easements also involve boat ramps, as well as camping and parking areas.
- m. Special** – Some easements in the lands database are under the “Special” category which suggests that the originators could not place the agreement into any specific category outlined above.

III. Guidelines for Granting Easements

A. Easement Request Approval/Denial Process

The Department will review requests for easements over Department property using the process outlined in this section.

1. The Regional Lands Committee Representative (RLCR), or other appropriate regional staff member, will be the point of contact for all easement inquiries and/or requests.
2. The RLCR or appropriate staff will contact the individual making the request to:
 - a. Determine the nature of the inquiry and/or request.
 - b. Describe the easement request review/approval process.
 - c. Forward an application package (Appendix A) if requested.
3. Upon receipt of a completed application package, the RLCR or appropriate staff will complete an assessment (later described) of the request and submit that assessment to the Land and Mitigation Program Coordinator (Coordinator) and Wildlife Bureau’s Habitat Manager (Manager). The request will include the Regional Supervisor’s (RS) endorsed recommendation to accept or deny the easement request.
4. The Coordinator, Manager, and Mitigation Staff Biologist will review the request and conduct any necessary internal due-diligence based on information from the Regional Assessment and Lands Database. They will also develop an informal estimated value of the easement to share with the Director.
5. The Coordinator will brief the Director on the request and the Director will accept the request, deny the request, solicit additional information from the RLCR and/or RS, or pass the request to the Idaho Fish and Game Commission for review.
6. The Coordinator will inform the Regional Supervisor and RLCR of Director guidance.
7. The Regional Supervisor will forward a letter to the applicant consistent with the Director’s guidance. The letter will provide justification for the decision made regarding the applicant’s request, and any instructions on how to proceed with accepted, rejected, or contingent proposals.

B. Required Components of a Regional Assessment for an Easement Request

For Regional Supervisors, the Coordinator, the Director's Office, the Idaho Fish and Game Commissioners, and other pertinent parties to effectively review easement requests, regional assessments need to contain certain information. Assessments will be presented in narrative form with attachments. At a minimum, assessments will include five items:

1. A copy of the easement application package. The application package will include a detailed description of the easement request, contact information for the applicant, and an explanation of why the applicant is requesting an easement from the Department.
2. Maps identifying the Department property at issue, the applicant's property (if applicable), and the relationship between the Department ownership and applicant ownership to the surrounding landscape, alternate ownership, and public rights-of-way.
3. An overview of the acquisition history, ongoing obligations, third party involvement (federal nexus, e.g.), current uses, reference to any guiding management documents, and the effects of management activities.
4. Summary of anticipated effects (positive and negative) of the proposed easement on property management obligations, current operations, sportsmen access, and fish and wildlife resources.
5. An overview of any potential legal ramifications associated with the situation (to be further evaluated by the Attorney General's office).

C. Required Easement Request Provisions

Easements granted by the Department will address the following issues unless specifically excluded for cause after consultation with the Attorney General's office and approved by the Director's Office.

1. The easement location must be identified by a recorded survey or an accurate legal description. The legal description must include the width, length, and acreage to be included in the easement. The easement application shall contain a map that legibly shows all the pertinent information. The map must be a recent topography map or a map based on recent aerial photography.
2. The width of any easement granted shall not be less than eight (8) feet, unless the Department determines that a lesser width is more appropriate and acceptable.
3. The easement must be non-exclusive and not substantially interfere with the purpose for which the Department property was purchased (i.e. wildlife, fish, habitat, access, public recreation, administrative, etc.).

4. The easement must relinquish the Department from all maintenance responsibilities associated with improvements created or used by the grantee as a provision of the easement.
5. The easement must relinquish the Department from all liabilities associated with the grantee exercising use of the easement.
6. The easement must include a reversion clause stating consequences of easement violations, lack of use, or mutual consent.
7. The easement should reserve the Department's rights to all owned surface and sub-surface resources including timber, water, and minerals.

D. Financial Obligations Associated with Granting or Amending an Easement

An easement constitutes a real property right with monetary value. The Department typically does not benefit from granting an easement. Thus, when granted, easements will typically be sold or exchanged at fair market value.

1. If the Department approves an easement application package, the regional letter notifying the applicant of approval will specify what conditions the applicant must meet prior to the Department granting an easement. At a minimum, conditions should include the following:
 - a. The applicant will be required to secure a licensed surveyor to define the proposed easement area and record said survey with the county.
 - b. The applicant will be required to secure legal services to draft an easement conforming to Department conditions and later refine the document if edits are required.
 - c. The applicant will be required to obtain an appraisal of the proposed easement or to compensate the Department for the cost of an appraisal prior to an appraisal contract having been completed.
 - d. The appraisal of the easement will normally be performed by a qualified appraiser. If the applicant wishes to obtain their own appraisal, the Coordinator will ensure that the appropriate appraisal standards are being used and the Department is listed as an intended user of the report.
 - e. The applicant will be required to pay the Department for the appraised value of the easement.
 - f. Additional payment for mitigation of impacts to wildlife, wildlife habitat, or recreational values that are not appropriately considered in the appraisal may be included in final compensation.
 - g. If, in the opinion of the Director, the market value of the easement is negligible AND the proposed easement and granted property rights will not have a significant negative impact on the encumbered Department land, then the appraisal requirement may be waived by the Department.
 - h. If the appraisal requirements are waived, the Department will, at a minimum, require payment to recover administrative costs associated with the easement review and approval process. The base value of \$1,532.26 will be applied beginning

in 2026 and will be adjusted annually based upon the Consumer Price Index. The Administration Bureau will develop, maintain, and make available on the WEIR a tool that calculates the new value for administrative fees at the beginning of each calendar year. The base value should be revisited every few years to determine if the fee is appropriately recovering administrative costs.

- i. The applicant will be required to record the easement, or easement release, with the appropriate county recorder's office and the applicant. Coordinator should insure the Department has records of the recorded easement.

Applicants may propose an exchange to moderate or eliminate the referenced out-of-pocket expenses. To be considered, such exchange proposals must involve the transfer of a perpetual, real property right to the Department. Exchange proposals involving goods, services, or rights unlikely to result in perpetual benefit to the Department will be denied.

When an exchange proposal involves a real property right deemed to be of value to the Department, the RLCR will present the proposal to the Lands Committee, and the Lands Committee will evaluate the merits of the proposed exchange with focus on the property or rights to be gained by the Department. The Lands Committee may task the pertinent region or Coordinator to estimate the values of the exchange (monetary and otherwise) and initiate further negotiations with the proponent.

E. Exceptions

While the aforementioned procedures will address the majority of situations in which easements are sought for Department property, exceptions will occur. A list of known exceptions follows:

1. Requests for easements may originate due to a Department request. For instance, the Department may request a utility company install electrical power and the utility company may fulfill our request only if the Department grants an easement. In such instances, fees and responsibilities will be waived and/or assumed by the Department.
2. Easements of less than two years in duration that are not expected to be renewed constitute more of an operational issue than a property holding issue. An example may be an easement pertaining to limited term access to facilitate construction on adjoining property or to complete survey work. These term situations are more appropriately handled with a license, permit, or agreement. In such instances, a region may negotiate fees and responsibilities independently, then route the agreed upon documentation through the Department Contract Review Process for approval.
3. Easement requests arising from alternate public entities to address public needs merit special attention. Policy-defined obligations will remain in place with the understanding negotiations and accommodations will often drive how the situation is ultimately addressed.

F. Record Keeping and Monitoring for Compliance

Effective administration of an easement application process and monitoring of the resulting easements requires the ongoing attention of all staff involved. Consequently, the following obligations have been established:

1. The RLCR is responsible for maintaining records associated with an easement application until the application is denied or the Coordinator assumes the lead role addressing conditions required to grant the easement.
2. After an easement is recorded, the Coordinator will distribute copies to the Department's land database, the grantee, and applicable region. The Coordinator will add records to the Lands Database.
3. The RLCR is responsible for monitoring grantee compliance with easement provisions.

IV. Guidelines for Acquiring Easements

Easements to be negotiated and created by the Department will be addressed in a consistent manner to provide a transparent process for the Idaho Fish and Game Commission to attain less-than-fee interests in property. The acquisition process for Department held easements should follow the Land Policy as outlined in Sections H and I. The following information outlines additional information pertinent to easements, not detailed in the Land Policy.

Easement acquisitions with the Department in the title, in the easement terms, or if the Department's estimated contribution is more than \$25,000 and title is held by another entity will be reviewed by the Lands Committee.

1. Easements negotiated and drafted by Department staff are forwarded to the appropriate RLCR. All Department staff negotiating conservation easements with willing landowners will work from a template Letter of Intent (Appendix B).
 - a. **Easement Proposals other than Conservation Easements** - The RLCR completes a BA-23 Land Acquisition Form describing the easement purpose, maps and any other pertinent information. The proposal also includes a complete draft easement document.
 - b. **Conservation Easement Proposals** – The RLCR completes a BA-23 Land Acquisition Form describing the conservation values to be protected and including maps and a bulleted list of easement terms discussed with the landowner from the template Letter of Intent (LOI; Appendix B).
2. Upon receipt of an easement acquisition proposal:
 - a. **Easement Proposals other than Conservation Easements** – The Coordinator will review to ensure that an easement proposal meets all Department requirements.

The Coordinator, Manager, and Mitigation Staff Biologist will evaluate whether the easement proposal is to be included on the Lands Committee agenda for evaluation or if the proposal is to be forwarded to a subcommittee consisting of the Coordinator and/or Manager, and appropriate RLCR. The subcommittee will develop a recommendation to the director.

Table 1. Check list for the completion of a conservation easement (CE).

		Check	Date Completed
1	C.E. Terms/Letter of Intent (LOI)		
	a CE purpose and public benefit		
	b Negotiate CE Terms		
	c Mortgage Subordination		
	d Mineral Rights		
	e Costs		
	f Third Party Rights		
2	BA-23 Process/Review		
	a Region Review Completed		
	b BA-23 Submitted to LAC		
	c Land Committee Recommendation		
	d Director Approves Lands Committee Recommendation		
	e IDFG Commissioner Tour/Briefing		
	f Notify Land Owner of Review Status		
	g IDFG Commission Approval - Executive Committee		
3	Appraisal - only needed to IRS standards if landowners are donating the easement		
	a Mail Appraisal Bid Requests		
	b Review Bids/Send to Purchasing with BA-1		
	c Award Appraisal		
	d Order Preliminary Title Report		
	e Completed Appraisal Received		
	f Review Appraisal (i.e., BPA and/or Region)		
	g Report to Lands Committee		
4	Negotiations/Options		
	a Review Appraisal with Landowner		
	b Send draft Option for legal review		
	c Landowner Signature on Option		
	d Director Signature on Option		
	e Mail copy of Option to Landowner		
	f BA-1 for Consideration (escrow)		
	g Set up Escrow Account		
	h Schedule County Commission Approval		
	i County Commission Approval		
	j Report to Lands Committee		
	k Gold Sheet		
	l IDFG Commission Approval		
	m Regional Supervisor to Notify Legislators		
	Due Diligence Investigations		
	a Environmental Land Audit (Hazmat)		
	b Landowner to fill out environmental questionnaire		
	c Baseline Report		
	d Landowner to fill out baseline questionnaire		
	e Cultural Survey		

	f	SHPO Letter		
	g	Engineering - Boundary Survey		
	h	Legal Description Review by Engineering		
	Closing			
	a	Letter to Landowner Exercising Option		
	b	Escrow Instructions to Title Company		
	c	Arrange with Title Company Closing Date		
	d	Arrange deposit of Stewardship Funds		
	e	Contact Director's Office		
	f	Transaction Completed		
	g	Mail Copies of Deed/Title Report to Boise/ BPA		

Appendix A

**Idaho Department of Fish and Game
Easement Request Application**



Dear Applicant,

The Idaho Department of Fish and Game appreciates your interest in pursuing an easement on/across Department land. In order to address your request in a fair and consistent manner, guidelines have been established to guide the review process. We ask for your patience as we proceed.

Granting an easement on Department ownership involves the transfer of a real property right with significant monetary value. Further, transferring that right forever alters how the Department can manage the property at issue. Given these facts and in light of the Department obligation to manage property holdings to maximize long-term public benefit, easement requests are carefully evaluated.

Usually, the citizens of Idaho / State / Department do not benefit by granting an easement to a private party and encumbering the associated property. As such, when easements are granted, applicants are required to carry the costs associated with the activity, including the costs for the Department to obtain an appraisal of the easement value. If an easement application is accepted, the applicant will be required to contract all services (except the appraisal) required to develop the easement and to then pay fair market value for the easement. Costs may be significant.

To ensure the review process proceeds smoothly, it is very important for you to provide accurate information in a timely manner. Carefully review the attached application and ensure all of the questions are answered in detail. The Department may contact you and request additional information. It is important for you to provide that information so the review process can proceed.

Upon submitting your application to one of the seven regional offices located throughout the state, the region will assess the request and submit a proposal to the Department Lands Program. The Lands Program reviews the regional proposal and passes a recommendation to the Director. The Director may act on the request or pass the request to the Idaho Fish and Game Commission for additional review. The process is not fast, but it is consistent and ensures your request is given due consideration.

If you have questions regarding the easement request process, application development, or the Department property at issue, we encourage you to contact the appropriate regional office and speak with the Regional Wildlife Habitat Manager. He/She is your first point of contact and remains available to provide assistance.

Sincerely,

<Name>
Regional Supervisor

Application - Easement Request For Department Ownership

Applicant Information

Name: _____

Address: _____
Street City State Zip

Telephone #: _____
Home Work Cell

Department Property at Issue

Please describe the location of the Department property for which you are requesting an easement:

What county does the property occur within? _____

What is the nearest city or town? _____

What is the legal description of the Department property at issue?

Township Range Section ¼ Section

Attach a county generated plat map of the Department property at issue and delineate that portion of the property for which you are requesting an easement.

Attached: ___ Yes ___ No

Describe in detail what type of easement you are requesting and what type of provisions you want the easement to include.

(Example: I am requesting a right-of-way easement 50 feet in width which allows me to construct a road from point A to point B. A bridge over Muddy Creek would also need to be constructed. The easement would need to be perpetual and allow me to engage in maintenance activities at will. The road will be used to access a single family residence.)

Continued On Next Page

What is the legal description of your property?

_____ Township Range Section ¼ Section

Attach a county generated plat map of your property and delineate that portion which borders Department ownership.

Attached: ___ Yes ___ No

Additional Information

Is it possible to meet the need you identified by obtaining an easement from an alternate neighbor? ___ Yes ___ No

Explain:

Do you believe you have a legal right to the easement you are requesting?

___ Yes ___ No

If yes, explain:



Appendix B- Template Letter of Intent for a Proposed Conservation Easement

IDAHO DEPARTMENT OF FISH AND GAME

600 S Walnut / PO Box 25
Boise, Idaho 83707-0025

C.L. "Butch" Otter / Governor
Cal Groen / Director

<Date>

<Landowner>
<Address>
<City, State, zip code>

Dear <Landowner>,

Re: Letter of Intent for a proposed Conservation Easement

The Idaho Department of Fish and Game is pleased to have the opportunity to help you protect your property's fish and wildlife resources with a conservation easement (CE). Based on our conversations and meetings, the following is general information and key provisions for the pending CE on your property. This letter in itself is not legally binding; rather, the purpose is to clarify the specifics of the arrangements so the appraiser can assess the value of the CE and we can draft a final CE document.

A full conservation easement document is typically 40 to 50 pages long, with a baseline biological study included. This summary letter will help us focus on the key items and progress toward completing the final CE document. The enclosed attachment outlines the conservation easement. Please read this letter and attachment, review it with your advisors, and call use if you have questions. If this letter is acceptable, please sign it and return it to us. **The Department cannot move forward with your CE until we have a signed Letter of Intent (LOI) indicating your wish to proceed.**

1. Conservation Easement Purposes and Public Benefits of the Easement

The CE was created to encourage private landowners to conserve important fish and wildlife resources on open, relatively undeveloped private lands. The permanent preservation of these key natural resources was deemed to be in the overall public interest of the United States and the State of Idaho. To qualify your property for a CE your property must have significant and sufficient natural resources (i.e., conservation values). The conservation attributes and values have to be comprehensively defined, inventoried, studied and documented in a baseline report.

2. Conservation Easement Terms

- **Please review the draft bulleted terms of the easement attached to this letter as Attachment A.** The terms outlined in the attachment remain negotiable until you and the Department have signed and recorded the final easement document. This draft outline represents our understanding of what we have tentatively agreed on, as well as outlining standard easement provisions. A draft conservation easement will be prepared with these terms.

3. Permanency of the Conservation Easement

The CE will be permanent and will be recorded with the title. New landowners will be bound by restrictions on activities and development in the CE that you establish. Even if you or a future landowner experience financial distress, or if you changed your mind about the CE, the CE will not be removed. It is wise for you to think about the restrictions your children and grandchildren can live with. The permanence is your legacy and it means your property will be preserved forever.

4. Title Insurance

Easement donors have to provide a title insurance policy insuring the conservancy's interest in the land. The Department will order a preliminary commitment for title insurance from a local title insurance company so that we can confirm ownership, check encumbrances and other interests. You will need to review the title work carefully and inform us and the title company of any errors. At or before closing, you may need to provide other documents for the title company in order for them to issue a policy. The Department will need copies of those documents as well.

5. Mortgage Subordination

If there is a mortgage, deed of trust, contract for deed, other lien and/or land sale contract encumbering the property, then according to federal regulations the Department must have the property released from that lien at closing or have the lenders subordinate their interests to the conservancy's easement. Please notify us if this is your situation.

6. Mineral Rights

If the title commitment reveals that any other parties besides you have a legal interest in the minerals on your property, then federal regulations require that you do one of two things. Either you can acquire the mineral rights from the owner, or you can have a geologist do a study of the potential of future mining and, if the potential is negligible, the geologist will issue a "Letter of Remoteness." We can work together on these steps if and when this issue arises.

7. Survey and Flagging Boundaries

In order to establish and enforce an easement, the Department has to be able to find the legal property boundaries on the ground. The Department requires that all of the actual property boundaries be legally surveyed and the property corners legally monumented. The Department also requires that the boundaries be marked and recorded. We will need to determine what surveying needs to be done, in consultation with a professional land surveyor.

8. Baseline Report and Questionnaire(s)

Department staff will visit the property and document the property's fish and wildlife resources and physical condition with maps, photographs, sketches and narrative descriptions and compile this into a "baseline report." This report documents the conservation purposes and conservation values of the easement. It is also used by the Department to monitor any changes in the land over

time and, if needed, resolve any disputes or enforcement actions. The Department will prepare the baseline report with your assistance. You will need to:

- **Complete a general baseline questionnaire.** This is to capture anything you know about the property's plants and animals.
- **Complete an environmental questionnaire.** This is to gather your knowledge of any hazardous materials and the like on the property.
- **Provide a Forest Management Plan.** The Department can help you find resources to prepare and write a forest management plan, if you do not already have a written plan.
- **Provide us with copies of any reports** you have about the property, such as letters from foresters or county extension agents.
- **Review and sign the baseline resource report** at or before closing.

9. Physical Access

Department staff will need access to your property to take photographs, obtain GPS data and gather information to prepare the baseline resource report. The staff will call ahead to schedule this work.

10. CE Processing Fees

We have tried to summarize and identify the costs that might be involved with finalizing a CE and who is responsible for these costs. <MODIFY THIS SECTION AS NEEDED>

IDFG can pay for:

1. All staff work by IDFG staff and Deputy Attorney General;
2. The baseline environmental study required by law;
3. Filing fees for the conservation easement and other documents;
4. The preliminary title report, including special minerals search; and,
5. Half the cost of an appraisal. An appraisal to IRS and yellowbook standards is required by federal law for landowners who want to claim tax benefits. No appraisal is required for landowners who do not want to claim tax benefits, but the Department will still require an appraisal for its records. The costs of an appraisal vary depending on the property and specifics of the CE. Appraisers tell us that a ballpark estimate is between \$6,000 and \$10,000.

The landowner costs include:

1. Property boundary survey – The cost varies, depending on the existing documentation and past survey work;
2. Half the cost of an appraisal; and,
3. Geologist's study and "letter of remoteness" -- This is required by federal rules on conservation easements only if the landowner does not own all of the mineral rights on the parcel. The title report will tell us if this is an issue.

11. Legal and Tax Advice

The Department does not provide tax, legal, real estate or other professional services or advice and cannot assure landowners that tax benefits will be available in their particular case. **You need to consult with your tax advisor and/or attorney before granting a conservation easement. Establishing the tax and legal consequences of donating a conservation easement is the**

responsibility of you, your lawyer and your tax advisor. They should also be able to advise you about the deductibility of a Stewardship Fund donation and some or all of the expenses you incur in connection a CE. **It is up to the landowner and his or her legal and tax advisors to decide if the CE, expenses, and Stewardship Fund donation qualify for a tax deduction.** You will be responsible for paying your own attorney's and tax advisor's fees.

12. Appraisal

To claim a charitable donation deduction on your federal income taxes, the federal government requires that the landowner obtain a real estate appraisal to determine the objective monetary value of the CE. The government requires that you hire an appraiser who is qualified to do CE appraisals. The appraiser would produce for you, the IRS, and the Department a federal yellowbook appraisal report for the CE. Appraisals for a CE can be quite complex and only a select group of appraisers possess the required qualifications. The Department can assist you with the process of getting a qualified appraiser. The appraisal report should be completed no more than 60 days before the easement is granted. Both the Department and you will receive copies of the appraisal.

13. Confidentiality

The Department will maintain confidentiality about all of our discussions. The Department will disclose them only to our staff, consultants and the Idaho Fish and Game Commissioners in executive sessions, only as necessary to evaluate the transaction. All of those people will keep information about your property confidential. Upon completion of the negotiations, the Idaho Fish and Game Commission will need to approve the acquisition of the CE in a public meeting. At that time, information regarding the terms of your easement will be made public, but no personal or confidential information will be shared.

14. Communications

If you have questions, concerns or want to discuss changes please call <insert name> at 208-xxx-xxxx, or email at xxxx@idfg.idaho.gov.

15. Signatures

If you agree with the basic process, fees, and draft key provisions (Attachment), please sign below. This letter is not a contract. It is not legally binding at this stage. It is simply a statement of good faith and general information. You and IDFG staff may need to fine-tune these requirements and standards in order to complete the legal drafting of the final conservation easement document.

FOR THE LANDOWNER, WE AGREE:

We agree to the general concepts in this letter and key provisions for the conservation easement (in the Attachment). We understand that this letter is not a contract and is not legally binding at this stage. It is simply a statement of good faith and general information.

<LANDOWNER NAME> _____ Date _____

<LANDOWNER NAME> _____ Date _____

FOR THE IDFG, WE AGREE

We agree in concept. This letter is not a contract and it is not binding. IDFG staff will need to fine-tune these requirements and standards in order to complete the legal drafting of the final conservation easement document.

_____ Date _____

<Name>, Mitigation Staff Biologist

Thank you for your commitment to conservation. Your conservation easement will leave a fine legacy for the permanent protection of Idaho's fish and wildlife resources.

Sincerely,

<Name>

< Wildlife Program Coordinator >

Encl.

ATTACHMENT A
KEY PROVISIONS OF THE CONSERVATION EASEMENT
(Example)

Location: (Note: This is a simplified draft. Some changes will need to be made and additional clauses included incorporating the required legal boiler plate and professional standards.)

Landowners <insert name>

Location: <Insert general location>

Acres: <insert number>

Conservation purposes and conservation values:

Purposes --The conservation purposes of this easement is to assure that the property will be retained forever in its undeveloped predominantly forested, scenic and open space condition, to provide relatively natural habitat for plants and wildlife, and to prevent any use of the property that would significantly impair its conservation values.

Values -- The specific conservation values identified are <insert here; for example: “prime elk winter range, bull trout spawning habitat, etc.”>

Summary of Easement Terms (draft):

Easement allows (reserved rights of the landowner):

- All property rights not specifically prohibited or restricted by the easement
- Quiet enjoyment of the property
- Non-motored recreation on the property
- Existing house -- Right to occupy, maintain, repair and remodel the existing house and buildings
- New construction of a future home(s)
- Outbuildings --Right to construct new outbuildings (e.g. sheds, garage) that will not be used for dwellings
- Utilities – Right to install, repair and maintain electricity, phone, water, sewer and other utilities.
- Roads – Right to repair and maintain existing roads and driveway in their current condition
- Timber - Right to cut domestic firewood, prune trees and keep roads and trails clear. All other timber cutting is subject to forest management section (see “Other Key Easement Provisions”)
- Hunting and fishing, as allowed by state law
- Home business allowed
- Farming and ranching to the extent that these activities do not damage the conservation values and subject to a grazing management section (see “Other Key Easement Provisions”)
- Right to sell or otherwise convey the property (subject to the easement terms)

Easement restrictions and prohibitions:

- Subdivision -- No subdivision or other divisions of land

- Development -- No development or residential, commercial, manufacturing; industrial activities and land uses <list exception here and in “easement allows” section>
- Mining – No mining, oil/gas development, minerals leasing and related activities
- Timber – No clear cutting of timber. Other restrictions apply (See forest management section in “Other Key Easement Provisions”)
- Roads -- No construction of new roads
- Signs -- No signs or billboards, except to direct the public and reduce trespass
- No collection or storage of trash or any unsightly material
- Hazardous waste/dumping -- No storage or dumping of hazardous waste, toxic chemicals, trash or any unsightly material
- Water development (changes to waterways) -- No draining, filling or ditching of springs or wetlands. No watercourse alterations or modifications; no damming, dredging or diking of streams, springs or wetlands
- Farming and ranching -- <List any restrictions here to protect the conservation values. For example, a limit on AU per acre to prevent overgrazing and erosion or the fencing of riparian area to protect vegetation and stream banks. Other restrictions may apply (See grazing management plan)>
- No game farms
- Wildlife standards -- <Note: Depending on the location and wildlife on the property, special species-linked standards may be inserted here>

Easement requires written notice to IDFG prior to:

- Construction of utilities required for maintenance of utilities only if excavation involved
- Permitted harvesting of live timber
- Transfer of title

Easement requires IDFG prior written approval for:

- Expansion, reconstruction or replacement of permitted dwelling
- Creating or amending a forest management plan

Other Key Easement Provisions:

- Forest management standards (summary) – Timber harvests for commercial sales and timber harvest to control insect damage, disease, storm damage or for commercial harvest require the landowner to notify the Department in advance and to seek Department permission. The landowner will prepare an overall forest management plan. Before carrying out a timber harvest, the landowner will prepare a timber harvest plan (which the Department will review) to reduce damage to the environment and to the specific conservation values on the property. Timber harvests must be supervised by a certified professional forester. The specific performance standards will be in the plans. There will be no clear cutting of timber allowed unless it is critical for forest health or public safety and approved by a certified professional forester and the Department in advance.
- Building envelope and standards for new houses (summary) – < Insert applicable standards here. For example: “The building site will need to be identified and surveyed. The site will need to be of limited size (e.g. 1-3 acres per house). For construction of the new house there could be a square footage limitation and a height limitation (of two stories not counting the basement) in order to preserve the natural scenic area. Building setback

standards will apply to protect streams, lakes, or other water resources or other sensitive areas on the property.“>

- The easement will be perpetual, recorded in the County land records, and any new (future) owner of the Property will take title subject to the terms of the easement.
- Public access allowed, or educational / outreach program

Monitoring and Enforcement by the Department:

- The Department will monitor the easement regularly (typically annually) to ensure that the terms are being upheld.
- The Department will have the right to enforce the easement to protect the conservation values.

Appendix C – Calculation of Stewardship Funds for Conservation Easements

STEWARDSHIP FUND MATRIX EXPLANATION OF VARIABLES

The method is based on a cumulative points system for factors affecting the potential cost of easement stewardship to the easement holder, including appraised value, parcel size, travel cost, neighbors, potential for adjacent development, and the possibility of future litigation. The points are entered on a spreadsheet to calculate the final fee value (Table 1). The process should be used as guideline, subject to negotiation, in which specific circumstances affect the final funding needs. The base fee can change in the future. It is recommended that the rationale on why the base fee was adjusted be included in the calculation of the stewardship fee.

1. Appraised value – more expensive properties are more likely to be involved in boundary disputes and violation of easement restrictions; more likely to have problems with future owners who do not have buy-in to the conservation easement idea.

< \$25,000	1 Point
25,001 – 50,000	2
50,001 – 75,000	3
75,001 – 100,000	4
100,001 – 250,000	5
250,001 – 500,000	6
500,001 – 1,000,000	7
1,000,001 – 1,500,000	8
1,500,001 – 2,000,000	9
> \$2,000,000	10

2. Parcel size – smaller properties are easier to check and inspect; more likely to identify easement restriction violations.

< 6 acres	1 Point
6 – 100 acres	2
101 – 200 acres	3
201 – 500 acres	4
501 – 750 acres	5
751 – 1,000 acres	6
1,001 – 1250 acres	7
1,251 – 1,,500 acres	8
1,501 – 1,750 acres	9
> 1,750 acres	10

3. Travel Cost – properties in remote areas cost more in travel time and per diem to do inspections.

< 10 miles	1 Point
11 - 20 miles	2
21 - 50 miles	3
51 - 75 miles	4
76 – 100 miles	5
101 – 150 miles	6
151 – 175 miles	7
176 – 200 miles	8
201 – 250 miles	9
> 250 miles	10

4. Number of neighbors – the more adjacent landowners the more likely you will have boundary issues and easement restriction violations. More frequent inspections are required if you have a high number of neighbors.

0 – 1 neighbors	1 Point
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10 or more	10

5. Potential for adjacent development – if there is a high likelihood that adjacent properties will be developed you are more likely to have an “island” of habitat that is hard to monitor and prevent encroachment. This is a subjective best estimate based on what is happening in the area near the property.

1 Very low chance
2
3
4
5
6
7
8
9
10 Very high chance

6. Possibility of future litigation - this takes into consideration the number of adjacent landowners, the value of the property, the number and complexity of easement restrictions, the number of reserved building envelopes and adjacent development pressure which all increase the likelihood of future litigation to defend the easement.

- 1 Not likely to have problems
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10 Very likely to have problems

7. Complexity of Monitoring – some parcels are easily viewed from the roadways while others may require travel by foot and/or the measurement of performance variables. Also, conservation easements with many terms versus those with very few terms may be more complex to monitor.

- 1 Not very complex to monitor
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10 Very complex to monitor

Table 1. Excel spreadsheet for calculating a stewardship fee.

STEWARDSHIP FEE WORKSHEET

PROPERTY: [insert name]

DATE: [insert date]

TOTAL POINT VALUE: 0

RECOMMENDED STEWARDSHIP FEE \$ - (this is the total point value multiplied by 100)

VARIABLE	POINT RANGE										WT FACTOR	POINT VALUE
	1	2	3	4	5	6	7	8	9	10		
1 Appraised value											2.0	
2 Parcel size											2.0	
3 Travel cost											1.0	
4 Number of neighbors											3.0	
5 Potential for adjacent development											2.0	
6 Possibility of future litigation											3.0	
7 Complexity of Monitoring											2.0	
TOTAL POINT VALUE												<u>0</u>

Appendix D

LANDOWNER QUESTIONNAIRE ABOUT ENVIRONMENTAL CONDITIONS, CHEMICALS, TOXICS, HAZARDS AND LAND USE HISTORY (FOR THE SUMMARY ENVIRONMENTAL REVIEW)

Instructions: This questionnaire is designed to help us understand what activities have taken place on your property. Federal law and regulations require us to evaluate each property we help conserve. Please print clearly. Please answer each question as completely as possible. If you do not know the answer or are unsure, please say so. On the last page there is room for you to provide additional information or details. Thank you!

Date _____

Landowner(s)

Name: _____

Name: _____

Property Address: _____

1. Agricultural uses on the property (if any):

A. What types of crops were grown? _____

B. What types of pesticides and herbicides were used? List brand names or generic names. _____

C. What type of fertilizers were used? _____

D. Storage of chemicals. Where are Ag chemicals stored on the property? _____

E. There was no agricultural use of the property. _____

F. There was agricultural use but no storage of chemicals. _____

2. Timber management activities on the property

A. Were any chemicals or oils used to treat wood products (fence posts, poles, etc.) on site? _____

- B. If so, which chemicals were used? _____
- C. If so, where on the property were they used? _____
- d. There was no timber management or harvests or wood products treatment on the property.

- E. There was timber management activities, but no chemicals were used. _____

3. Manufacturing activities on the property

- A. What was made (what product)? _____
- B. Were chemicals used in making the product? _____
- C. If so, what chemicals were used? _____
- D. Are there chemicals stored on the property? _____
- E. If so, where are they stored? _____
- E. There was no manufacturing use on the property. _____
- F. There was manufacturing, but no chemicals were used _____

4. House, Buildings (Residential Uses)

- A. Was asbestos used in the houses and buildings? (Examples: Asbestos is sometimes used in siding, pipe insulation, furnace boilers, and insulation) _____
- B. If so, where is the asbestos? _____
- C. Is there a septic system and leach field? _____
- D. If “yes,” to C above, where is it located? _____

5. Mining (Includes gravel “borrow pits”)

- A. What was mined? _____
- B. What methods were used? _____
- C. How were mine tailings and wastes disposed of? _____
- D. Where were tailings and wastes disposed of? _____
- E. What chemicals were used in the mining process? _____
- F. Where are the chemicals stored or disposed of? _____

G. There was no mining on the property. _____

6. Dumps, Garbage Dumps

A. Are there any existing (or old) dumps on the property? _____

B. If so, where are they? _____

C. In general, what types of material were dumped? _____

7. Storage of Gasoline, Oils, Fuels

A. Are there any large (greater than 10 gallon) storage tanks for gasoline, kerosene, oil, or similar fuels on the property? _____

B. If so, where are they located? _____

C. Have there been any leaks or spills? _____

8. Electric Transformers and Equipment

A. Are there any current (or old) transformers on the property? _____

B. If so, where are they located? _____

9. Radioactive materials

A. Are there any radioactive materials on the property (medical radioactive waste, radioactive waste storage drums)? _____

B. If so, what is stored? _____

C. If so, where is it stored? _____

D. There are no radioactive materials on the property. _____

10. Surrounding Properties (Neighbors)

A. For each neighboring property, how is the land currently used (examples: Smith – farm; Jones – car repair shop)? _____

B. For each neighboring property, what do you know about how the land was used in the past (history of property)? _____

C. To your knowledge, were chemicals or hazardous materials used in those properties? _____

11. Other Activities, Other Materials

Do you know of any other activities or other materials that may pose some type of health or environmental risks? Please provide details here.

12. Comments, Details, Notes

Please list any details here:

12. Signature Acknowledgment

To the best of my knowledge the above information is true and correct.

Landowner Signature

Date

Landowner Signature

Date

Appendix E

BASELINE DATA QUESTIONNAIRE FOR LANDOWNERS (FOR THE BASELINE REPORT)

Instructions: this questionnaire is designed to help us document any wildlife use of the property, vegetation types, rare or unusual species of any kind, water resources, geology, and other fish and wildlife resources data for your property. Federal and state laws and regulations require us to document the current composition and condition of the natural resources. There is a section at the end for your comments and data that do not fit neatly into these categories. Thank you!

Date _____

Landowner (s)

Name

Name

Property Address

V. FISH AND WILDLIFE

▪ Fish – What fish species have you seen? _____

▪ Wildlife – What animals have you seen on the property?

▪ Birds: What birds have you seen on the property?

- Sign – Sometimes you do not see wildlife per se; instead, you see signs (e.g. droppings, feces, grazed vegetation, bedding areas, footprints). What signs have you seen?

- Special species: Have you seen any of the following: grizzly bears, eagles, falcons, lynx, wolverine, fisher, bull trout, cutthroat trout or kokanee salmon?

VI. VEGETATION

- Do you have any outstanding or unusual trees on the property? (e.g. A larch tree about 200 feet in height, an old growth western red cedar, a yew tree). Please describe:

- Have you seen any outstanding or unusual plants, flowers, grasses, or shrubs? Please describe:

VII. WATER RESOURCES

- Describe any springs, wetlands, streams, rivers, ponds, lakes or other water features on your property.

GEOLOGY, GEOMORPHOLOGY AND SOILS

- Are there any major, geologic features on the property? (For example: This could be flood plains, benches, cliffs, moraines, sinkholes, caves, hills, mountain slopes, unusual rock formations, etc)

-

- Have you had the soils tested or analyzed? If so, what types of soils are present?

VIII. HISTORY

- Briefly describe the history of this property.

- Are there any historic sites and/or artifacts on the property? Please describe:

STUDIES DONE, LETTERS FROM PROFESSIONALS

- Have there been any studies done on the property? If so please list the name of the study and the name of the author.

- Have you received any letters from professionals that describe the property or certain resources on it? (e.g., this could be a letter from a forester or a county farm agent, civil engineer, geologist or consultant). If so, please list the name of the company and (briefly) the topic of the letter.

OTHER INFORMATION

LANDOWNER SIGNATURES

To the best of my knowledge, the information herein is true and accurate.

Landowner Date

Landowner Date

I administered this survey to the landowners. I am analyzing the information provided by the landowners.

Name

Appendix F

BASELINE REPORT

FOR THE

<Project name>

CONSERVATION EASEMENT

WITH THE

<LANDOWNERS>



Prepared by:

<Authors>

Idaho Department of Fish and Game

<Date>

**BASELINE REPORT
TABLE OF CONTENTS**

IX. Introduction

A survey and study of biological, physical and cultural features has been completed on the <insert property name> property in <insert county name> County, Idaho. This survey is part of the Idaho baseline documentation of the physical, ecological and conservation values of this property and current condition of the property for the purpose of a conservation easement. The <insert number> acres described in this baseline report were protected by a conservation easement on <insert date>.

In this baseline report, biological, ecological and physical characteristics of the property are identified and documented. In the report an assessment is made of land uses, conservation values, and the natural resources. The current condition of the property is assessed.

The conservation easement document is the source language for any management or restrictions agreed to by the easement grantors and grantee (the Idaho Department of Fish and Game). The baseline report refers to the conservation easement document and is subordinate to the easement in any interpretation. The conservation easement document is the legally controlling document.

X. Contact Persons for this Property and this Project

LANDOWNERS

<insert names, addresses and telephone numbers>

IDAHO DEPARTMENT OF FISH AND GAME

<insert staff names, titles, office address, telephone>

XI. Landowner's (Grantors) Acknowledgment of Conditions of this Property

Completion of the following acknowledgement and statement satisfies Section 1.170A-14(g) (5) of the federal tax regulations.

Grantor(s): Name(s) _____
Address(es) _____

Protected Property: This _____ acre property consists of Section _____, Township _____, Range _____. The property is located in _____ County, Idaho. The property encompasses and features of conservation value.

Total number of Acres protected by conservation easement: <insert number>

Grantee: The condition of the property on the date of the donation is established with the completion of the Baseline Report, which includes descriptions of the property's natural resources and condition documented through field visits, surveys, photographs and maps. The Grantee has inspected the property in order to confirm the condition of the property.

Grantor (Property Owners): In compliance with Section 1.170A-14 (g) (5), we the Grantors hereby confirm that this Baseline Report provides an accurate representation of the property at the time of the conservation easement donation. In order to effectively monitor for perpetual compliance with the purposes of the easement, the Baseline Report may be supplemented with additional on-site photographs, maps and reports on an on-going basis.

Grantor (sign): _____ Date: _____
(Print name): _____

Grantor (sign) _____ Date: _____
(Print name) _____

Sworn before me this ____ day of _____, 2010
Notary Public for the state of _____
My commission expires: _____

Notary signature: _____
(print name): _____

Grantee (Holder): Idaho Department of Fish and Game

By: _____ Date: _____
(Print name) _____

Sworn before me this ____ day of _____, 2010
Notary Public for the state of _____
My commission expires: _____

Notary Signature: _____
Notary printed name: _____

XII. Property Data and Background Information

Project name:
Transaction type:
Acres, number:
General location:
Legal description:
Property address and road directions to property:
History, historic land uses:
Current land use:
Landowner's motivation to protect the property:

XIII. Adjacent Properties, Protected Properties, Public Lands

A. Adjacent properties

Other protected properties in the general area
Public lands abutting this property or in the general area

B. Inventory Methods and Procedures

This baseline report and inventory documents the physical and biological attributes of the _____ property. This report documents the current condition of the property. The CFPOC staff and other natural resources experts made site visits and inspections to survey the physical and biological features of the property. The general inventory steps included:

1. Mapping of the property location, physical features and major habitats on topographic maps or other-photos;

2. Interviews with property owner, local residents (as appropriate), and managers of adjacent public lands; review of county records, and review of literature to learn the history of the property and other lands in the vicinity;
3. Documentation of the local geology, geomorphology, soil features and hydrology, as appropriate, through review of pertinent literature and site investigation;
4. Documentation of the major habitats, vegetation condition, and special features of conservation interest through interviews with the landowner and site visits;
5. Consultation with state and federal officials and pertinent literature to develop lists of wildlife (usually vertebrate animals) suspected to occur on the property;
6. Documentation of wildlife (usually vertebrate animals) and/or evidence of their occurrence on the property through site visits and interviews with the landowner.

In addition to site visits to inventory the physical, biological and cultural resources, the author consulted the appropriate individuals and state and federal agencies.

C. Author Qualifications

<Note: fill in the authors' education, expertise, background on ecological inventories, etc. One-two paragraphs per author>

XIV. Geology, Geomorphology, Topography, Soils

A. Geology

B. Geomorphology

C. Soils

<Note: Provide soils map and general info on soil types. From NRCS or Conservation District>

XV. Ecological Inventory, Information and Current Condition

A. Overview

B. Vegetation types and inventories; Habitat Types (Biogeographical Classification)

1. Vegetation Inventory Data

2. Habitat Types Areas

<Note: Use a Biogeographical/ecological classification system. (Use Cooper's handbook for Idaho projects. Use Phfister's handbook et. al for Montana projects. Discuss each habitat type>

3. Wildlife use of property

<Note: list the individual species. List IDFG or MFWP data and any data from federal wildlife agencies here. List and discuss any ESA listed species and any species classified by State wildlife managers as species of concern.>

XVI. Water Resources Data

XVII. Conservation Values to Be Protected

<Note: Get these from the conservation easement document – recitals section. Also, list any other specific values here>

XVIII. Summary of the Conservation Easement Document

<Note: Just list the reserved rights and the provisions in a short sentence/list format as presented in the Letter of Intent, ie., No subdivision, No development, No mining etc.>

This summary is a brief summary. Please refer the Conservation Easement document; it is the legally controlling document (not this baseline report).

XIX. Linkage of the Conservation Values to the key Restrictions and Prohibitions of the Conservation Easement which are used to Protect the Conservation Values and the Natural Quality of the Property

<Explain how the conservation values are protected by the CE regulations, prohibitions and other provisions>

XX. Legal/Title Information

<Note: Cite the existence of the recent title report (and title search) and that the title is clear. Especially, indicate that the landowner does own the mineral and timber rights and that no outside party has the rights to develop the property for mineral extraction or timber harvest.>

XXI. Other Information

XXII. References, Literature and Sources Cited

APPENDIX A -- MAPS

Map 1 – General Area map

Map 2 – Site Map (survey map)

Map 3 – Topographical Map

Map 4 – Aerial Photograph

Map 5 – Habitat Types and Special Areas Map (if available)

Map 6 – Photo Points Map

APPENDIX B --- Photographs of the Property

<Photos of property keyed to the photo points map>

APPENDIX C --- OTHER DOCUMENTS