

## **PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE**

### **Subpart A—Community Forest and Open Space Conservation Program**

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### **Subpart A—Community Forest and Open Space Conservation Program**

#### **§ 230.1 Purpose and scope.**

(a) The regulations of this subpart govern the rules and procedures for the Community Forest and Open Space Conservation Program (CFP), established under Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). Under the CFP, the Secretary of Agriculture, acting through the Chief of the Forest Service, awards grants to local governments, Indian tribes, and qualified nonprofit organizations to establish community forests for community benefits by acquiring and protecting private forestlands.

(b) The CFP applies to eligible entities within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the territories and possessions of the United States.

#### **§ 230.2 Definitions.**

The terms used in this subpart are defined as follows:

*Borrowed funds.* Funds used for the purpose of cost share which would encumber the subject property, in whole or in part, to another party.

*Community benefits.* One or more of the following:

- (1) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;
- (2) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;
- (3) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.;
- (4) Benefits from serving as replicable models of effective forest stewardship for private landowners; and,

(5) Recreational benefits such as hiking, hunting and fishing secured with public access.

*Community forest.* Forest land owned in fee-simple by an eligible entity that provides public access and is managed to provide community benefits pursuant to a community forest plan.

*Community forest plan.* A tract specific plan that guides the management and use of a community forest, was developed with community involvement, and includes the following components:

- (1) A description of the property, including acreage and county location, land use, forest type and vegetation cover;
- (2) Objectives for the community forest;
- (3) Community benefits to be achieved from the establishment of the community forest;
- (4) Mechanisms promoting community involvement in the development and implementation of the community forest plan;
- (5) Implementation strategies for achieving community forest plan objectives;
- (6) Plans for the utilization or demolition of existing structures and proposed needs for further improvements;
- (7) Planned public access, including proposed limitations to protect cultural or natural resources, or public health and safety. In addition, local governments and qualified nonprofits need to provide a rationale for any proposed limitations; and
- (8) A description for the long-term use and management of the property.

*Eligible entity.* A local governmental entity, Indian tribe, or a qualified nonprofit organization that is qualified to acquire and manage land.

*Eligible lands.* Private forest lands that:

- (1) Are threatened by conversion to nonforest uses;
- (2) Are not lands held in trust by the United States; and
- (3) If acquired by an eligible entity, can provide defined community benefits under the CFP and allow public access.

*Equivalent officials of Indian tribes.* An individual designated and authorized by the Indian tribe.

*Federal appraisal standards.* The current *Uniform Appraisal Standards for Federal Land Acquisitions* developed by the Interagency Land Acquisition Conference (also known as the yellow book).

*Fee-simple.* Absolute interest in real property, versus a partial interest such as a conservation easement.

*Forest lands.* Lands that are at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested. Forests are determined both by the presence of trees and the absence of nonforest uses.

*Grant recipient:* An eligible entity that receives a grant from the U.S. Forest Service through the CFP.

*Indian tribe.* Defined by Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); for purposes of this rule, Indian tribe includes federally recognized Indian tribes and Alaska Native Corporations.

*Landscape conservation initiative.* A landscape conservation initiative, as defined in this final rule, is a landscape level conservation or management plan or activity that identifies conservation needs and

goals of a locality, state, or region. Examples of initiatives include community green infrastructure plans, a community or county land use plan, Indian tribe's area of interest/homelands plans, a Statewide Forest Resource Assessment and Strategy, etc. The conservation goals identified in the plan must correspond with the community and environmental benefits outlined for the CFP.

*Local governmental entity.* Any municipal government, county government, or other local government body with jurisdiction over local land use decisions as defined by Federal or State law.

*Nonforest uses.* Activities that threaten forest cover and are inconsistent with the community forest plan, and include the following:

- (1) Subdivision;
- (2) Residential development, except for a caretaker building;
- (3) Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as directional drilling for oil and gas development or onsite use of gravel from existing gravel pits;
- (4) Industrial use, including the manufacturing of products;
- (5) Commercial use, except for sustainable timber or other renewable resources, and limited compatible commercial activities to support cultural, recreational and educational use of the community forest by the public; and
- (6) Structures and facilities, except for compatible recreational facilities, concession and educational kiosks, energy development for onsite use, facilities associated with appropriate forest management and parking areas; said structures, facilities and parking areas must have minimal impacts to forest and water resources.

*Qualified nonprofit organization.* Defined by the CFP authorizing statute (Pub. L. 110–234; 122 Stat. at 1281), an organization that is described in Section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)) and operates in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of that Code (26 U.S.C. 170(h)(4)(A)). For the purposes of the CFP, a qualified nonprofit organization must meet the following requirements:

- (1) Consistent with regulations of the Internal Revenue Service at 26 CFR 1.170A–14(c)(1):
  - (i) Have a commitment to protect in perpetuity the purposes for which the tract was acquired under the CFP; and
  - (ii) Demonstrate that it has the resources to enforce the protection of the property as a community forest as a condition of acquiring a tract under the CFP.
- (2) Operate primarily or substantially in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of I.R.S. code (26 U.S.C. 170(h)(4)(A)). Conservation purposes include:
  - (i) The preservation of land areas for outdoor recreation by, or for the education of, the general public,
  - (ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
  - (iii) The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
  - (iv) The preservation of a historically important land area or a certified historic structure.

*Public access.* Access that is provided on a non-discriminatory basis at reasonable times and places, but may be limited to protect cultural and natural resources or public health and safety.

*State Forester.* The State employee who is responsible for administration and delivery of forestry assistance within a State, or equivalent official.

### **§ 230.3 Application process.**

- (a) The Forest Service will issue a national request for applications (RFA) for grants under the CFP. The RFA will be posted to <http://www.grants.gov> as well as other venues. The RFA will include the following information outlined in this final rule:
- (1) The process for submitting an application;
  - (2) Application requirements (§ 230.4);
  - (3) Review process and criteria that will be used by the Forest Service (§ 230.5); and
  - (4) Other conditions determined appropriate by the Forest Service.
- (b) Pursuant to the RFA, interested eligible entities will submit an application for program participation to:
- (1) The State Forester or equivalent official, for applications by local governments and qualified nonprofit organizations, or
  - (2) The equivalent officials of the Indian tribe, for applications submitted by an Indian tribe.
- (c) Interested eligible entities will also notify the Forest Service, pursuant to the RFA, when submitting an application to the State Forester or equivalent officials of the Indian tribe.
- (d) The State Forester or equivalent official of the Indian tribe will forward all applications to the Forest Service, and, as time and resources allow:
- (1) Provide a review of each application to help the Forest Service determine:
    - (i) That the applicant is an eligible entity;
    - (ii) That the land is eligible;
    - (iii) That the proposed project has not been submitted for funding consideration under the Forest Legacy Program; and
    - (iv) Whether the project contributes to a landscape conservation initiative.
  - (2) Describe what technical assistance provided through CFP they may render in support of implementing the proposed community forest project and an estimate of needed financial assistance (§ 230.10).
- (e) A proposed application cannot be submitted for funding consideration simultaneously for both the CFP and the Forest Service's Forest Legacy Program (16 U.S.C. 2103c).

### **§ 230.4 Application requirements.**

The following section outlines minimum application requirements, but the RFA may include additional requirements.

- (a) Documentation verifying that the applicant is an eligible entity and that the proposed acquisition is of eligible lands.
- (b) Applications must include the following regarding the property proposed for acquisition:
  - (1) A description of the property, including acreage and county location;
  - (2) A description of current land uses, including improvements;
  - (3) A description of forest type and vegetative cover;
  - (4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;
  - (5) A description of applicable zoning and other land use regulations affecting the property;
  - (6) Relationship of the property within and its contributions to a landscape conservation initiative; and
  - (7) A description of any threats of conversion to nonforest uses.
- (c) Information regarding the proposed establishment of a community forest, including:
  - (1) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;
  - (2) A description of the community involvement to date in the planning of the community forest and of the community involvement anticipated in its long-term management;

- (3) An identification of persons and organizations that support the project and their specific role in acquiring the land and establishing and managing the community forest; and
- (4) A draft community forest plan. The eligible entity is encouraged to work with the State Forester or equivalent official of the Indian tribe for technical assistance when developing or updating the Community Forest Plan. In addition, the eligible entity is encouraged to work with technical specialists, such as professional foresters, recreation specialists, wildlife biologists, or outdoor education specialists, when developing the Community Forest Plan.
- (d) Information regarding the proposed land acquisition, including:
  - (1) A proposed project budget (§ 230.6);
  - (2) The status of due diligence, including signed option or purchase and sale agreement, title search, minerals determination, and appraisal;
  - (3) Description and status of cost share (secure, pending, commitment letter, etc.) (§ 230.6);
  - (4) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;
  - (5) The proposed timeline for completing the acquisition and establishing the community forest; and
  - (6) Long term management costs and funding source(s).
- (e) Applications must comply with the Uniform Federal Assistance Regulations (7 CFR part 3015).
- (f) Applications must also include the forms required to process a Federal grant. Section 230.7 references the grant forms that must be included in the application and the specific administrative requirements that apply to the type of Federal grant used for this program.

### **§ 230.5 Ranking criteria and proposal selection.**

- (a) Using the criteria described below, to the extent practicable, the Forest Service will give priority to an application that maximizes the delivery of community benefits, as defined in this final rule, through a high degree of public participation; and
- (b) The Forest Service will evaluate all applications received by the State Foresters or equivalent officials of the Indian tribe and award grants based on the following criteria:
  - (1) Type and extent of community benefits provided. Community benefits are defined in this final rule as:
    - (i) Economic benefits such as timber and non-timber products;
    - (ii) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;
    - (iii) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc;
    - (iv) Benefits from serving as replicable models of effective forest stewardship for private landowners; and
    - (v) Recreational benefits such as hiking, hunting and fishing secured through public access.
  - (2) Extent and nature of community engagement in the establishment and long-term management of the community forest;
  - (3) Amount of cost share leveraged;
  - (4) Extent to which the community forest contributes to a landscape conservation initiative;
  - (5) Extent of due diligence completed on the project, including cost share committed and status of appraisal;
  - (6) Likelihood that, unprotected, the property would be converted to nonforest uses;
  - (7) Costs to the Federal government; and
  - (8) Additional considerations as may be outlined in the RFA.

## **§ 230.6 Project costs and cost share requirements.**

- (a) The CFP Federal contribution cannot exceed 50 percent of the total project costs.
- (b) Allowable project and cost share costs will include the purchase price and the following transactional costs associated with the acquisition: appraisals and appraisal reviews, land surveys, legal and closing costs, development of the community forest plan, and title examination. The following principles and procedures will determine allowable costs for grants:
  - (1) For local and Indian tribal governments, refer to 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87) .
  - (2) For qualified nonprofit organizations, refer to 2 CFR Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A–122).
- (c) Project costs do not include the following:
  - (1) Long-term operations, maintenance, and management of the land;
  - (2) Construction of buildings or recreational facilities;
  - (3) Research;
  - (4) Existing liens or taxes owed; and
  - (5) Costs associated with preparation of the application, except any allowable project costs specified in section 230.6(b) completed as part of the application.
- (d) Cost share contributions can include cash, in-kind services, or donations and must meet the following requirements:
  - (1) Be supported by grant regulations described above;
  - (2) Not include other Federal funds unless specifically authorized by Federal statute;
  - (3) Not include non-Federal funds used as cost share for other Federal programs;
  - (4) Not include funds used to satisfy mandatory or compensatory mitigation requirements under a Federal regulation, such as the Clean Water Act, the River and Harbor Act, or the Endangered Species Act;
  - (5) Not include borrowed funds; and
  - (6) Be accomplished within the grant period.
- (e) Cost share contributions may include the purchase or donation of lands located within the community forest as long as it is provided by an eligible entity and legally dedicated to perpetual land conservation consistent with CFP program objectives; such donations need to meet the requirements specified under § 230.8 Acquisition requirements (a)(1)(ii).
- (f) For the purposes of calculating the cost share contribution, the grant recipient may request the inclusion of project due diligence costs, such as title review and appraisals, that were incurred prior to issuance of the grant. These pre-award costs may occur up to one year prior to the issuance of the grant, but cannot include the purchase of CFP land, including cost share tracts.

## **§ 230.7 Grant requirements.**

- (a) The following grant forms and supporting materials must be included in the application:
  - (1) An Application for Federal Assistance (Standard Form 424);
  - (2) Budget information (Standard Form SF 424c—Construction Programs);
  - (3) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d— Construction Programs); and
  - (4) Additional forms, as may be required.
- (b) Once an application is selected, funding will be obligated to the grant recipient through a grant.
- (c) The initial grant period will be two years, and acquisition of lands should occur within that timeframe. The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process.
- (d) The grant paperwork must adhere to grant requirements listed below:

- (1) Local and Indian tribal governments should refer to 2 CFR Part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87) and 7 CFR Part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for directions.
- (2) Nonprofit organizations should refer to 2 CFR Part 215 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations (OMB Circular A-110) and 7 CFR Part 3019 Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations for directions.
- (e) Forest Service must approve any amendment to a proposal or request to reallocate funding within a grant proposal. If negotiations on a selected project fail, the applicant cannot substitute an alternative site.
- (f) The grant recipient must comply with the requirements in § 230.8 before funds will be released.
- (g) After the project has closed, as a requirement of the grant, grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile: a digital, vector-based storage format for storing geometric location and associated attribute information, of CFP project tracts and cost share tracts, if applicable.
- (h) Any funds not expended within the grant period must be de-obligated and revert to the Forest Service for redistribution.
- (i) All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through the CFP.

### **§ 230.8 Acquisition requirements.**

- (a) Grant recipients participating in the CFP must complete the following, which applies to all tracts, including cost share tracts:
  - (1) Complete an appraisal:
    - (i) For lands purchased with CFP funds, the appraisal must comply with Federal Appraisal Standards prior to the release of the grant funds. The grant recipient must provide documentation that the appraisal and associated appraisal review were conducted in a manner consistent with the Federal appraisal standards.
    - (ii) For donated cost share tracts, the market value must be determined by an independent appraiser. The value needs to be documented by a responsible official of the party to which the property is donated.
  - (2) Prior to closing, notify the landowner in writing of the appraised value of the property and that the sale is voluntary. If the grant recipient has a voluntary option for less than appraised value, they do not have to renegotiate the agreement.
  - (3) Purchase all surface and subsurface mineral rights, whenever possible. However, if severed mineral rights cannot be obtained, then the grant recipient must follow the retention of qualified mineral interest requirements outlined in the Internal Revenue Service regulations (26 CFR 1.170A-14 (g)(4)), which address both surface and subsurface minerals.
  - (4) Ensure that title to lands acquired conforms to title standards applicable to State land acquisitions where the land is located:
    - (i) Title to lands acquired using CFP funds must not be subject to encumbrances or agreements of any kind that would be contrary to the purpose of the CFP.
    - (ii) Title insurance must not be a substitute for acceptable title.
  - (5) Record with the deed in the lands record of the local county or municipality, a Notice of Grant Requirement, which includes the following:
    - (i) States that the property (including cost share tracts) was purchased with CFP funds;
    - (ii) Provides a legal description;
    - (iii) Identifies the name and address of the grant recipient who is the authorized title holder;

- (iv) States the purpose of the CFP;
- (v) References the Grant Agreement with the Forest Service (title and agreement number) and the address where it is kept on file;
- (vi) States that the grant recipient confirms its obligation to manage the interest in real property pursuant to the grant, the Community Forest Plan, and the purpose of the CFP;
- (vii) States that the grant recipient will not convey or encumber the interest in real property, in whole or in part, to another party; and
- (viii) States that the grant recipient will manage the interest in real property consistent with the purpose of the CFP.

### **§ 230.9 Ownership and use requirements.**

- (a) Grant recipient shall complete the final community forest plan within 120 days of the land acquisition, and must update the plan periodically to guide the management and the community benefits of the community forest.
- (b) Grant recipient shall provide appropriate public access.
- (c) In the event that a grant recipient sells or converts to nonforest uses or a use inconsistent with the purpose of the CFP, a parcel of land acquired under the CFP, the grant recipient shall:
  - (1) Pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater; and
  - (2) Not be eligible for additional grants under the CFP.
- (d) For Indian tribes, land acquired using a grant provided under the CFP must not be sold, converted to nonforest uses or a use inconsistent with the purpose of the CFP, or converted to land held in trust by the United States on behalf of any Indian tribe.
- (e) Every five years, the grant recipients will submit to the Forest Service a self-certifying statement that the property has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the CFP.
- (f) Grant recipients will be subject to a spot check conducted by the Forest Service to verify that property acquired under the CFP has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the CFP.

### **§ 230.10 Technical assistance funds.**

CFP technical assistance funds may be provided to State Foresters or equivalent officials of Indian tribes through an administrative grant to help implement community forest projects funded through the CFP, and as a result, funds will only be provided to States or Indian tribes with a CFP project funded within their jurisdiction. Section 7A (f) of the authorizing statute limits the funds made available for program administration and technical assistance to no more than 10% of all funds made available to carry out the program for each fiscal year.