

Department of Public Works. Navigation on the waterway is commercial and recreational.

The Third Street Drawbridge will be secured in the closed-to-navigation position from 8 a.m. on October 3, 2011 to 6 p.m. on November 18, 2011, to allow the City of San Francisco to complete emergency electrical repairs. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were received.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 7, 2011.

**D.H. Sulouff,**

*Bridge Section Chief, Eleventh Coast Guard District.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 230

**RIN 0596-AC84**

#### Community Forest and Open Space Conservation Program

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Community Forest and Open Space Conservation Program (CFP), authorized by Section 8003 of the Food, Conservation, and Energy Act of 2008. The CFP legislation is an amendment to the Cooperative Forestry Assistance Act of 1978. The CFP is a competitive grant program whereby local governments, Indian tribes, and qualified nonprofit organizations are eligible to apply for grants to establish community forests through fee-simple acquisition of private forest land. The program's two purposes are to provide public benefits to communities including economic benefits through sustainable forest management, environmental benefits including clean air, water, and wildlife habitat; benefits from forest-based educational programs; benefits from serving as models of effective forest stewardship; and recreational benefits secured with public access; and to

acquire private forest lands that are threatened by conversion to nonforest uses. Existing provisions in Forest Service regulations pertaining to the Stewardship Incentive Program will be removed as deauthorized by the Farm Security and Rural Investment Act of 2002, and this final rule will be substituted in lieu thereof.

**DATES:** This final rule is effective November 21, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Kathryn Conant, U.S. Forest Service, State and Private Forestry, Cooperative Forestry, (202) 401-4072. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

#### SUPPLEMENTARY INFORMATION:

##### Background and Need for Final Rule

Congress authorized the Community Forest and Open Space Conservation Program (CFP) to address the needs of communities to protect and maintain their forest resources. In the CFP authorization, Congress found that tens of thousands of acres of private forest land are under pressure from development; public access to privately owned forest land for recreational opportunities has declined; people derive health benefits from having access to forests for recreation and exercise; forests protect public water supplies and may provide financial benefits from forest products; forest parcels owned by local governments and nonprofit organizations provide important educational opportunities for private forest landowners; and there is an urgent need to leverage financial resources to purchase important parcels of privately owned forest land as the parcels are offered for sale.

The CFP is a competitive grant program whereby local governments, Indian tribes, and qualified nonprofit organizations are eligible to apply for grants to establish community forests through fee-simple land acquisitions. "Fee-simple" means absolute interest in real property, versus a partial interest such as a conservation easement. By creating community forests through land acquisition, communities and Indian tribes can sustainably manage forests for these and many other benefits, including wildlife habitat, stewardship demonstration sites for forest landowners, and environmental education.

While the statutory title for the CFP includes the term "open space," the authorizing language does not discuss

the term. The only land cover Congress references is "forests." As a result, in this final rule, the term "open space" is not used, and it is assumed that the only type of "open space" on which Congress wanted the CFP to focus is "forests."

The Forest Service believes that these regulations for the CFP will facilitate administration of the program and provide uniform criteria for program participation. The program will focus its funding towards forests that provide community benefits as defined in this rule and are identified as a national, regional, or local priority for protection. See Ranking Criteria and Proposal selection in § 230.5 of this final rule.

Benefits provided by forests acquired under the CFP may address a variety of outcomes such as protecting a municipal water supply, providing public access for outdoor recreation, or providing economic benefits from sustainable forest management, including harvesting forest products and using woody biomass for renewable energy production. Beyond local measures of success, the contribution of community forests to larger protected areas of forest helps support resource-based economies and adds needed resiliency to natural systems as they respond to climate change. Therefore, in addition to public engagement to articulate local needs and capacity, successful community forests in the CFP should be part of a larger conservation effort that protects a variety of land types and working lands, which provide ecosystem services. In this way, the program delivers local benefits that can also have a larger impact.

##### Relationship to Other Cooperative Forestry Assistance Act Programs

The Cooperative Forestry Assistance Act of 1978 (CFAA) enables the Forest Service to work with States, private landowners, and communities to address the full range of forest resources from urban street trees to large rural timber lands. The CFP recognizes that successful protection of community forests depends on engaged citizens. Their participation is equal in importance to the forests being protected. The CFP complements and builds upon other CFAA programs that focus on stewardship and education by providing the opportunity for communities to go a step further and directly acquire and manage forests. The CFP provides grant assistance directly to Indian tribes, local governments, or qualified nonprofit organizations; it is able to assist those entities that have demonstrated a sustained commitment to community forestry. Through public engagement, these entities are able to

articulate specific community needs that this program can meet and demonstrate that they have the capacity to manage a public asset such as a community forest.

#### *Relationship to the Forest Legacy Program*

There are now two land protection programs under the Cooperative Forestry Assistance Act, the Forest Legacy Program (FLP) codified at 16 U.S.C. 2103c and the CFP codified at 16 U.S.C. 2103d. Both the CFP and FLP provide financial assistance to partners to protect forest land that is threatened by conversion to nonforest uses and provide significant environmental, economic, and social benefits. The two programs are complementary; each engages unique partners and utilizes different tools for land protection. While a few projects may align with the intent of both programs, most projects will qualify for only one. An applicant is not allowed to submit a project application to both the CFP and FLP simultaneously.

The FLP provides grants to State agencies, though other units of government have partnered with the State agency on a few projects. The CFP provides grants directly to local governments, Indian tribes and qualified nonprofit organizations. The FLP allows for the acquisition of conservation easements or fee-simple titles, while the CFP permits only fee-simple acquisition of land as a community forest. While proponents of FLP are encouraged to coordinate with and obtain input from the public, such coordination is not a critical project selection criterion. In contrast, successful CFP projects will be evaluated on the extent of community involvement in the development and the long-term management of the community forest. While FLP encourages public access or other recreational opportunities, it is not a program requirement. In contrast, the CFP requires public access.

#### *Relationship to the Urban and Community Forest Program*

The Urban and Community Forestry (UCF) Program, authorized in the Cooperative Forestry Assistance Act (16 U.S.C. 2105), is a cooperative program of the Forest Service that encourages and promotes the creation of healthier, more livable communities; it is not a land protection or acquisition program like the CFP or FLP. UCF provides technical, financial, educational, and research assistance to communities, through its primary partner the State forestry agencies, to plan urban forestry programs and to plant, protect,

maintain, and use wood from community trees and forests to maximize social, environmental, and economic benefits. The CFP provides grants directly to local governments, Indian tribes, and qualified nonprofits for fee-simple acquisition of land to establish community forests.

#### **Community Forest Plan**

The CFP requires communities to draft a community forest plan (§ 230.2 and § 230.4) as part of the application process. The draft community forest plan submitted with the application should be as specific as possible, but the Forest Service recognizes that the plan may not be finalized until after the project is closed. The community forest plan may build upon existing land management plans to meet the requirements of the CFP.

#### *Landscape-Level Conservation Plans and the Community Forest Plan*

The community forest plan can tier to an existing broader landscape-level plan. Applicants should start by using the landscape level plan most germane to the CFP project; examples of plans include community green infrastructure plans, community land use plans, Indian tribe's area of interest/homelands plans, and others as long as there are overlapping or shared goals. A Statewide Forest Resource Assessment and Strategy is an example of a land use plan that may also be useful. The Forest Service recommends that applicants contact their State Forester or equivalent official of the Indian tribe or Bureau of Indian Affairs to see if they may provide technical assistance during the development of a CFP application. Professional specialists, including foresters may also provide valuable assistance at the project development stage; however, the services of a professional specialist is not mandated by the program.

Grant recipients must submit a final community forest plan within 120 days of the title transferring to the grant recipient (§ 230.9). The community forest plan must be developed with community involvement and incorporate as much as possible the desires of the community. The draft community forest plan should describe the community that benefits from the community forest and what benefits the community forest will provide. The expectation is that there will be ongoing and meaningful community participation in plan development and revision; this could be through a standing advisory board or similar mechanism. The community is encouraged to periodically review and

revise the community forest plan (§ 230.9).

#### **Proximity to Community Requirements**

The final rule does not impose a requirement on the proximity of the community forest to the benefitting community or on the size of the benefitting community (§ 230.4). The final rule will fund quality projects with active community participation.

#### **Project Review and Selection Process**

The Forest Service will conduct a review and ranking process to select projects for funding. The application process is outlined in § 230.3 of this final rule. Individual applications will be ranked according to criteria outlined in § 230.5 of this final rule. The Forest Service anticipates providing additional specificity on the review process, review criteria, and timelines in an annual Request for Applications (RFA).

#### **Role of the State Forester or Equivalent Official of the Indian Tribe**

Under the CFP, applications will be submitted to the State Forester (for local government and non profit organizations) or the equivalent official of the Indian tribe (for Indian tribes). As time and resources allow, these entities may conduct a general review of all applications submitted to them for eligibility and compatibility with landscape conservation efforts. The State Forester or equivalent official of the Indian tribe may provide technical assistance to applicants in the preparation of applications.

The final rule requires the State Forester or equivalent official of the Indian tribe to forward all CFP applications they receive to the Forest Service, but provides them with an opportunity to comment. Application review by State Foresters or equivalent officials of the Indian tribe is voluntary, but will be considered by the Forest Service. Such participation will not result in a transfer of responsibility for any aspect of the CFP project selection process to the State Forester or Indian tribes from the Forest Service.

While the Forest Service anticipates this intermediate step will add approximately 30 days to the review process, input from State Foresters or equivalent officials of the Indian tribes will be valuable in helping the Forest Service make final funding decisions.

#### **Eligible Entities**

The statute establishing the CFP states that only local governments, Indian tribes, and qualified nonprofit organizations are eligible to receive a grant through the CFP. The statute also

provides definitions for those three eligible organizations. Local governments are defined as municipal, county, and other local governments with jurisdiction over local land use decisions. Indian tribes are defined as prescribed by Section 4 of the Indian Self-Determination and Education Assistance Act (U.S.C. 450b), which includes federally recognized Indian tribes and Alaska Native Corporations. Finally, qualified nonprofit organizations are defined as charities described in the Internal Revenue Code of 1986 26 USCS § 170(h)(3) which operates in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A). A conservation purpose is defined as the preservation of land for outdoor recreation or education, protection of natural habitat or ecosystems, preservation of open space, and preservation of historic lands or structures. Consistent with regulations of the Internal Revenue Service (26 CFR 1.170A–14(c)(1)) qualified nonprofit organizations must also have a commitment to protect in perpetuity, the purposes for which the tract was acquired under the CFP, and demonstrate that they have the resources to enforce the protection of the property as a community forest. In general, a land conservancy or land trust would be a typical organization that would be considered a qualified nonprofit organization under the authorizing statute of the CFP.

#### **Ensuring Permanence of Community Forest Projects**

In order to minimize the chances that the community forest is ever sold, or converted to nonforest uses or a use inconsistent with the CFP, the following three actions will be required of the grant recipient:

(1) Grant recipients will be required to record a Notice of Grant Requirements with the deed in the lands records of the local county or municipality.

(2) Grant recipients will define objectives for the use and management of the community forest in the required community forest plan. Because the size, condition, and possible uses of community forests under this program could be quite varied, the community forest plan will identify forest uses for the property. In order to guide compliance with the requirements of the CFP, “nonforest uses” is defined in § 230.2 of this final rule.

(3) Every five years, grant recipients will submit to the Forest Service a self-certifying statement that the property has not been sold or converted to nonforest uses. In addition, the 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 (§ 230.9).

In the statute establishing the CFP, Congress required that the grant recipient cannot sell the land or convert it to nonforest uses (Sec. 8003.e). In the event that these conditions are violated, the law requires that the grant recipient pay the Federal Government an amount equal to the greater of the current sale price or current appraised value of the land. An additional penalty is that the grant recipient that sells or converts a parcel acquired under the CFP will not be allowed to receive additional grants under the program. Ramifications for conversion to nonforest use or sale are discussed in § 230.9 “Ownership Use and Requirements” of this final rule.

#### **Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs**

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (“Uniform Act”) (42 U.S.C. 4601, *et seq.*) provides guidance and procedures for the acquisition of real property by the Federal government, including relocation benefits to displaced persons. Department of Transportation regulations implementing the Uniform Act (49 CFR part 24) have been adopted by the Department of Agriculture (7 CFR part 21). The CFP is deemed exempt from the Uniform Act because it meets the exemption criteria stated at 49 CFR 24.101(b)(1).

#### **Federal Appraisal Standards**

Section 7A(c)(4) of the Cooperative Forestry Assistance Act (16 U.S.C. 2103d(c)(4)), requires that land acquired under the CFP be appraised in accordance with the current *Uniform Appraisal Standards for Federal Land Acquisitions* developed by the Interagency Land Acquisition Conference (also known as the Yellow Book), hereafter referred to as the Federal Appraisal Standards, in order to determine the non-Federal share of the cost of a parcel of privately-owned forest land. The Federal Appraisal Standards are contained in a readily available public document (<http://www.justice.gov/enrd/3044.html>). A grant recipient will be responsible for assuring that the appraisal of the CFP tract is done in conformance with the Federal Appraisal Standards. The Federal Appraisal Standards will be used to determine the market value for the purpose of determining CFP contribution and reimbursement for the

non-Federal cost share. However, separate tracts donated for the purpose of providing the non-Federal cost share may be appraised using the Uniform Standards of Professional Appraisal Practice (USPAP) or the IRS regulations for a donation in land. The Forest Service will be available to advise applicants with the appraisal and associated appraisal review and will conduct spot checks to assure compliance with Federal Appraisal Standards.

#### **Government-to-Government Consultation With Indian Tribes**

Indian tribes were invited to consult on the CFP proposed rule prior to review and comment by the general public. The consultation process was initiated September 30, 2010. The Deputy Chief for State and Private Forestry sent a letter to the Forest Service regional leadership requesting that they initiate consultation. Each unit then initiated consultation with Indian tribes, providing them with information about the CFP, the proposed rule, how to request government-to-government consultation, and where to send comments. Consultation concluded March 7, 2011.

Three Indian tribes consulted with the Forest Service about the CFP, many Indian tribes discussed the CFP with Forest Service personnel, and three Indian tribes sent comments through the public comment process. Two regions of the United States Department of the Interior, Bureau of Indian Affairs (BIA) also sent comments through the public comment process. Indian tribe and BIA comments were analyzed separately from general public comments. The Forest Service incorporated the input received through consultation and the public comment process into the development of this final rule.

#### **Indian Tribal Input and Agency Responses**

##### **The Authorizing Statute**

The following comments suggested changes to the rule, but these points are governed by the authorizing statute Section 8003 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234; Stat. 2043) and are not within the discretion of the Forest Service. As a result, no changes will be made to the final rule.

##### **Eligible Entities**

*Comment:* Eligible entities should include Tribal Organizations—such as the Native American Land Conservancy, whose mission is “to acquire and preserve our sacred lands”. We believe

inclusion of these types of tribal organizations is implied, as they are authorized by Tribal Governments through approval of Tribal Resolution to fulfill this mission. We strongly recommend the regulations clearly state that Tribal Organizations or Tribal Government Organizations can also apply under this program.

*Response:* “Eligible entity” is defined in the authorizing statute and, after consultation with the Office of General Counsel, the Forest Service interprets “eligible entity” to mean federally recognized Indian tribes and Alaska Native Corporations, local government entities, and qualified nonprofit organizations that are qualified to acquire and manage land. If a Tribal Organization meets these definitions, it would be an eligible entity. Tribal organizations that meet the definition of a “qualified nonprofit organization” would be an “eligible entity.” No change made to the final rule.

#### Eligible Lands

*Comment:* § 230.2 Definition: Expand the definition of community forest to include vacant, undeveloped, or underutilized developed lands because many lands that are sacred or important to Indian tribes that they would like to acquire may or may not be forested.

*Response:* Eligible land is described as “private forest land” by the authorizing statute; no change made to the final rule.

#### Conversion of Forest to Nonforest Land

*Comment:* Allow forest land to be converted to nonforest land.

*Response:* Conversion to nonforest land is a prohibited use in the authorizing statute; no change made to the final rule.

#### Trust Lands

*Comment:* Allow for the conversion of fee lands to Indian Trust.

*Response:* Conversion of fee lands into Indian Trust is a prohibited use in the authorizing statute; no change made to the final rule.

*Comment:* Because the program disallows placing CFP purchased land in Tribal trust, this requirement probably precludes Indian tribes from finding this program useful. In addition, the requirements of matching funds and inability to place in tribal trust lands essentially make the proposed program of very little use.

*Response:* The CFP authorizing statute prohibits CFP acquired lands to be transferred into Tribal trust lands. Financial gain from the community forest is possible through timber harvest and other land management practices.

No change to the final rule.

#### General Comments

*Comment:* Following discussions on the possible uses of the CFP within our traditional territory, there is interest in potential utilization of the program once it is in place and final guidelines established.

*Response:* The Forest Service agrees that the CFP will be a valuable tool for all eligible entities; no change to the final rule.

*Comment:* Community benefits have a lot of application to tribal interests on their homelands.

*Response:* The Forest Service agrees that the benefits provided by community forests will be appreciated by communities; no change made to the final rule.

*Comment:* Our Indian tribe has no objection to the proposed CFP.

*Response:* None required; no change to the final rule.

#### Priority for Indian Tribes

*Comment:* Are Indian tribes on an even playing field with all other applicants? Provide priority to Indian tribes which have lost land base due to Federal land acquisitions in the past.

*Response:* The Forest Service will ensure that all applicants are ranked using the criteria in § 230.5 and are given an equal opportunity for funding. Indian tribes’ specific concerns, such as loss of land base, may be described in the application, and the acquisition of the community forest should be discussed in the community benefits; no change to the final rule.

Department of the Interior (DOI) or Bureau of Indian Affairs (BIA) Appraisers

*Comment:* Could a DOI or BIA Federal Land Appraiser be used?

*Response:* If the appraiser is allowed by his or her agency and is qualified to conduct the appraisal as required in § 230.8 of the final rule, then a BIA or DOI appraiser could be used; no change made to final rule.

*Comment:* Include the BIA on ranking committee.

*Response:* The Forest Service will continue to engage BIA throughout implementation of the CFP. Composition of the ranking committee has yet to be decided. No change made to the final rule.

#### Tribal Area of Interest/Homeland

*Comment:* Tribal government documents/plans identify conservation needs and goals that apply to their area of interests/homelands. Would their area of interest/homelands equate to

locality, state or region as defined in the proposed rule?

*Response:* Areas of interest/homelands would equate to locality, state or region as defined in the final rule; no change made to the final rule.

#### BIA’s Indian Reservation Roads Program

*Comment:* The rule should require a public route be identified to Community Forest Program parcels through the BIA’s Indian Reservation Roads (IRR) Program to ensure the public continues to have access to lands purchased with CFP funds by an Indian tribe. IRR routes must, by law, be accessible to the public.

*Response:* The issue is more appropriately addressed on a case by case basis in specific project grants; no change made to the final rule.

#### Public Access Restrictions for Tribal Ceremonies

*Comment:* Indian tribes or Tribal Organizations should have the authority to control access on lands acquired by a Indian tribe or Tribal Organization; could a management plan for a community forest owned by the Indian tribe provide opportunities for closing all or portions of a community forest for short durations (a few days to a few weeks) to allow culturally sensitive tribal ceremonies to take place at various times during a year undisturbed by non-tribal members?

*Response:* As long as reasonable public access is allowed, limited closures, which are outlined and explained in the community forest plan, to accommodate tribal ceremonies would be consistent with the definition of public access (§ 230.2).

#### Public Comments and Agency Responses

On January 6, 2011, the Forest Service published a notice of proposed rule and request for comment on 36 CFR part 230 in the **Federal Register** (76 FR 33344). During the comment period, which ended March 7, 2011, the Forest Service received 28 responses containing over 150 comments. Responses from Indian tribes, the agencies that work with them and government-to-government consultations were also received and analyzed separately (see “Government-to-Government Consultation with Indian Tribes” above and “Consultation and Coordination with Indian Tribes” in the “Regulatory Certifications” to follow).

Twenty respondents explicitly expressed support, sixteen respondents suggested minor revisions, one respondent objected to Federal spending for any new program, and one

respondent felt program funds should be spent on other Forest Service priorities.

#### *The Authorizing Statute*

*Comment:* § 230.2 Definition: Expand the definition of “eligible entity” to include a wider range of nonprofit organizations.

*Response:* “Eligible entity” is defined in the authorizing statute; no change made to the final rule.

*Comment:* § 230.2 Definition: Expand the definition of “community forest” to include vacant, undeveloped, or underutilized developed lands.

*Response:* The authorizing statute requires the Secretary to award grants to acquire private forest land, and no other land cover is eligible; no change made to the final rule.

*Comment:* § 230.3 Application process: The States should be able to limit the number of applications being submitted for funding from each State to prevent applications that do not meet program requirements.

*Response:* The authorizing statute requires the State Forester or equivalent official of the Indian tribe to submit a list that includes a description of each project submitted by an eligible entity. The Forest Service encourages States and equivalent official of the Indian tribe to review and comment on the applications, but will not require it; no change made to the final rule.

*Comment:* § 230.4 Application requirements: Delete the requirement for a draft community forest plan.

*Response:* A community forest plan is a requirement of the authorizing statute; no change made to the final rule.

#### *Technical Assistance*

*Comment:* § 230.10 Technical assistance funds: Provide for ongoing technical assistance as a component of the grants. Technical assistance will be called for in all stages of establishing and maintaining a community forest, and the funding structure should reflect this; the CFP should allow awarding of technical assistance funds to State Foresters/Tribal governments before CFP projects have been funded to help get the program started and develop competitive applications with partner communities; this program puts an increased workload and unfunded responsibility on the State Forester or equivalent Tribal Government official since technical assistance funding is only available for implementation after a grant is awarded in their jurisdiction; is it possible for States with projects submitted within their jurisdiction to be reimbursed for any technical assistance provided in helping applicants prepare

proposals and draft community forest plans; could States be reimbursed for time spent providing technical assistance and/or processing on a “per application” basis?

*Response:* The authorizing statute limits funding for technical assistance to “not more than 10 percent of all funds made available to carry out the Program for each fiscal year to State Foresters or equivalent officials (including equivalent officials of Indian tribes) for Program administration and technical assistance.” The amount of funds available for technical assistance may not enable the Forest Service to reimburse State and Indian tribes for all technical assistance rendered both before and after the applications are submitted. Grant recipients should be prepared to incur the cost of ongoing maintenance and some cost associated with the application; no change made to the final rule.

*Comment:* Project costs should include dedicated, restricted funds for the long-term maintenance and management of community forests. Such funds should be allowable project and cost share costs.

*Response:* The authorizing statute only allows funds to be expended on acquiring land to establish community forests. Long term maintenance funds are the responsibility of the grant recipient; no change made to the final rule.

*Comment:* Provide adequate funding to communities for technical assistance. The program should be structured to make sure that grant recipients are made fully aware of the range of resources available to them through State forestry agencies—especially as they create and implement a community forest management plan.

*Response:* The Forest Service will help identify resources grant recipients can utilize when establishing their community forest. However, the authorizing statute does not provide funding for technical assistance directly to the community but rather funds go to States Foresters and equivalent officials of Indian tribes; no change made to the final rule.

#### *Use of CFP Funds*

*Comment:* The CFP should provide capacity building grants to establish new community forests.

*Response:* Capacity building grants are outside scope of this program by statute; no change made to the final rule.

*Comment:* The CFP should provide funding for the following two efforts as part of the upcoming program: 1. Tree

and forest resource inventories; 2. Operations and maintenance funding.

*Response:* These activities are outside the scope of this program; no change made to the final rule.

#### *Penalties*

*Comment:* Allow forest land to be converted to nonforest land.

*Response:* The authorizing statute specifies a penalty for converting the forests to nonforest uses; no change made to the final rule.

*Comment:* Strengthen the penalties for selling or converting CFP acquired lands to nonforest uses to help discourage sale or conversion to nonforest uses.

*Response:* The penalties for selling or converting CFP acquired lands are defined in the authorizing statute; no change made to the final rule.

#### *Support for the Proposed Rule*

*Comment:* Twenty respondents expressed support for the Community Forest Program

*Response:* None required; no change made to the final rule.

#### *General Comments*

*Comment:* Ten comments from six respondents identified program benefits:

- Creates many more community forests nationwide
  - Increases green space and enhances the health of any community
  - Develops a broader appreciation for the importance of our Country’s forests among youth and citizens of all ages
  - Keeps people connected to our forest heritage by sustaining timber management, protecting forest-based natural resources like water and wildlife, providing model forests to educate private landowners, and providing a natural setting for youth recreation and education
  - Encourages the incorporation of environmental education into community institutions
  - Provides much needed resources for forest conservation on the local level through local government and land trust partners
  - Conserves threatened forestlands that can meet locally-identified community needs for natural resource protection, economic development, and public connections to the land.
- Community forests, whether owned by a local government, Indian tribe, or nonprofit organization, have a strong track record of engaging a broad range of citizens in forest conservation, stewardship, and governance. Where situated near Federal and State lands, establishment of community forests can foster new collaboration across

boundaries to achieve landscape-level management objectives

- The option to develop community forests under nonprofit ownership can be particularly valuable when a local government desires community-based conservation of a tract but does not have the capacity to effectively oversee management and governance issues for a community forest

- Creates potentially tens of thousands of jobs nationwide, provides significant environmental benefits and spurs economic growth in regions that are suffering greatly from job losses, environmental degradation and rising health costs due to obesity and other environmental related illnesses such as asthma. Furthermore, the program would provide communities an opportunity to study urban forest ecology from its genesis and to develop models to be used in urban forests in the 21st century

*Response:* None required; no change made to the final rule.

*Comment:* Once created, community forests could sell environmental credits to help defray longer term operation and maintenance costs.

*Response:* The buying and selling of environmental credits is an evolving practice and may be subject to regulation by other Federal or State agencies. All community forest projects would need to be compliant with those regulations and the CFP regulation; therefore, no change made to the final rule.

*Comment:* Augment the funding for Forest Legacy Program administration funds and allow those funds to be used for both programs (Forest Legacy and CFP).

*Response:* Funds authorized for one program cannot be used for another. Use of Forest Legacy Program dollars for the CFP would constitute misappropriation of funds; no change made to final rule.

*Comment:* Make monitoring requirements for new community forests more stringent by increasing the number of spot checks and develop a schedule in order to improve accountability.

*Response:* Each community forest will have unique monitoring needs, and the Forest Service believes that the notice of grant agreement, self certification every five years, and spot checks identified in the final rule are sufficient project oversight; no change made to final rule.

*Comment:* The CFP should identify a specific person or "face" for the program so that communities and supporting institutions will know who to contact when they need assistance and information about the program.

*Response:* The CFP Web site (<http://www.fs.fed.us/spf/coop/programs/loa/>

[cfp.shtml](#)) will have current CFP contact information, and the Forest Service will make available information about the program; no change made to final rule.

*Comment:* A requirement for native species regeneration would be appropriate.

*Response:* Such a requirement may or may not be appropriate depending on goals and objectives of the community forest and, while encouraged, will be left to the discretion of the community; no change made to final rule.

*Comment:* Divert funds or resources from existing Forest Service programs for the CFP.

*Response:* The CFP is subject to annual appropriations by Congress, which will specify the amount of funds for the program. Funds authorized for one program cannot be used for another; no change made to final rule.

*Comment:* Final community forest plans should have an approval requirement by either the Forest Service or the State.

*Response:* The purpose of the community forest plan is to document and maximize the community benefits identified by the community. Therefore, the community developing the community forest plan should approve it. The community forest plan will be consulted during spot checks to ensure consistency with the program; no change made to final rule.

*Comment:* Use the Forest Resources Coordinating Committee (FRCC), established in the 2008 Farm Bill, to establish ranking criteria for the CFP.

*Response:* The FRCC focuses on private forest conservation issues which are not necessarily the only issues of concern for community forests; no change made to final rule.

*Comment:* The term "landscape conservation initiative" is not widely interpreted as inclusive of a town plan or similar conservation plan at the local level; clarify how to tie CFP projects to a landscape level conservation initiative.

*Response:* Applicants should use the landscape level plan most germane to their CFP project. The definition of landscape conservation initiative was revised in the final rule and changed the order of the ranking criteria in § 230.5 Ranking criteria and proposal selection.

*Comment:* Clarify the differences between the CFP and the Forest Legacy Program.

*Response:* The Forest Service felt this was an important clarification; added comparison of the CFP and Forest Legacy Program to the preamble of the final rule.

*Comment:* Add a ranking criterion for local governments which recognizes a

community's sustained commitment to their urban and community forests (e.g., as demonstrated through Tree City USA or other public recognition programs, hiring of city foresters, establishment of tree boards) and the community's ability to manage the community forest after it is acquired through the program.

*Response:* While this criterion would work well for local governments' applications, it would not fit for applications submitted by qualified nonprofit organizations and some Indian tribes; no change made to final rule.

*Comment:* Training may be required to build capacity within the State Foresters' offices, and flexibility should be built into the implementation of this component to see whether this system works or not, and how to implement it effectively across the States.

*Response:* The Forest Service is willing to provide CFP information to State Foresters, Indian tribes, and eligible entities in a variety of formats.

#### *Suggested Edits and Agency Responses*

Numerous changes were made to the preamble and or final rule to clarify aspects of the program and address questions raised by respondents (*italicized text was added*):

*Comment:* A number of comments proposed expanding eligible lands to include nonforested and developed land to achieve open space conservation.

*Response:* The Forest Service refers to this program as the "Community Forest Program" or "CFP" throughout this rule, as opposed to the "Community Forest and Open Space Conservation Program." The authorizing statute limits eligible lands to currently forested lands, precluding nonforested lands from consideration. To avoid future confusion regarding nonforested open space, the Forest Service will begin to colloquially refer to the program as the Community Forest Program or CFP.

#### *Section 230.2 Definitions*

*Comment:* Depending on how the term borrowed funds is defined, cost share contributions from bonded sources may or may not be eligible.

*Response:* The Forest Service agrees that there was a need to clarify the definition of borrowed funds as a cost share; reworded the definition to read "*Funds used for the purpose of cost share which would encumber the subject property, in whole or in part, to another party.*" The prohibition against borrowed funds is intended to protect the Federal investment and the community forest property from foreclosure. Bonds issued by units of government would be allowed because

failure to honor those debts would not likely put the community forest at risk and these funding mechanisms are commonly used to finance land purchases.

*Comment:* Concerns were raised that there are a variety of formal and informal educational benefits that can be linked to community forests not specifically mentioned in the proposed rule; community forests also help provide clean air as well as clean water.

*Response:* The Forest Service felt this was a valuable addition and amended definition of "Community benefits" (2) to read "Environmental benefits, including clean air and water, storm water management, and wildlife habitat;" and (3) to read "Benefits from forest-based *experiential* education programs, including K-12 *conservation education programs; vocational education programs; 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.* in final rule.

*Comment:* Respondents proposed alternative definitions of "forest lands;" and questioned if the definitions included prospective reforested or afforested acreage (prohibited by statute), or included the mangrove forest type.

*Response:* The number of comments related to the definition of forest lands made it clear that some additional clarification was necessary. A number of alternative definitions were considered, and the Forest Service decided to amend the definition of "Forest lands" to read "Lands that are at least five acres in size, suitable to sustain natural vegetation, and at least 75% forested. *Forests are determined both by the presence of trees and the absence of other prevailing land uses.*"

*Comment:* Clarify the term "Landscape conservation initiative" by stating that conservation or management plans or activities identify conservation needs and goals of a locality, state, or region. Conservation goals identified need to correspond with the community and environmental benefits outlined for the CFP.

*Response:* The Forest Service felt that this was a valuable clarification, adopted proposed language in both the preamble explanatory text and the final rule. Examples of initiatives include 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.

*Comment:* Definition of "nonforest uses": The exclusion of mining is in

conflict with the common use of rock quarries on forestland necessary to maintain roads essential to working forest operations. Many private forest lands have mineral rights retained by previous owners, and this aspect of the rule would eliminate many good projects from consideration; definition of nonforest uses should distinguish between smaller, community-based industrial uses that support sustainable forest management, and large-scale, industrial uses that would dramatically alter the character of the land.

*Response:* The Forest Service felt that this was a valuable clarification consistent with the purpose of the CFP; amended "nonforest uses" to read "Activities that threaten forest cover and are inconsistent with the community forest plan, and include the following: (3) Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as offsite directional drilling for oil and gas development or *onsite use of gravel from existing gravel pits* \* \* \* (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."

### Section 230.3 Application Process

Role of Professional Forester, State Forester or Equivalent Official of the Indian Tribe

*Comment:* A number of comments requested clarification or suggested either increasing or decreasing the role of State Foresters, Indian tribe officials, or professional foresters.

*Response:* All applicants are encouraged to consult with their State Forester or equivalent official of the Indian tribe, but the final rule does not require professional consultation. To address the comments, the final rule was changed to state that the State Forester's review would be based on available time and resources. In addition, the State Forester's review was clarified to include determining eligibility of the applicant and the land, confirming that the project is not also being proposed for funding through the Forest Legacy Program, and identifying if the project is part of a larger conservation initiative.

### Section 230.5 Ranking Criteria and Proposal Selection

*Comment:* Remove (a)(2) "An application with a subject property that makes a substantial contribution to a landscape conservation initiative. A landscape conservation initiative, as defined in this rule, is a landscape-level conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region."

*Response:* The Forest Service felt that this was an appropriate edit as this criteria was already listed and the revised order of the criteria was consistent with the purpose of the CFP; deleted (a)(2) language in "§ 230.5 Ranking Criteria and Proposal Selection" of the final rule.

### Section 230.6 Project Costs and Cost Share Requirements

*Comment:* A typical source of cost share contribution is likely to be in the form of bonded monies. Depending on how the term borrowed funds is defined, cost share contributions from bonded sources may or may not be eligible; we urge you to find a mechanism (such as subordination agreements) to allow local governments and qualified conservation organizations to engage local individual investors in purchasing property that would contribute to the match requirements for USFS Community Forest projects. Provision in the legislation for a subordination agreement, or other arrangement perhaps unacceptable to a commercial lending institution, would still enable interested individuals to work with local entities and the USFS to preserve working forest; nonprofit organizations sometime pursue bank loans to allow them to protect properties in a timely manner (e.g., during "stop gap" acquisitions) until they can raise the necessary funds through capital campaigns or other fundraising activities. Monies from such loans contribute directly to the land acquisitions, they are accountable, and they should therefore be allowed as cost share.

*Response:* The Forest Service determined that borrowed funds for the purpose of this rule are funds used for the purpose of cost share, which would encumber the subject property, in whole or in part, to another party. The prohibition against borrowed funds is intended to protect the Federal investment and the community forest property from foreclosure. Bonds issued by units of government would be allowed since failure to honor those



debts would not likely put the community forest at risk and these funding mechanisms are commonly used to finance land purchases; reworded the definition of borrowed funds.

*Comment:* Amend (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 objectives” to include “*such donations need to meet the requirements specified under § 230.8 Acquisition requirements (a)(1)(ii).*”

*Response:* The Forest Service felt that this was a valuable clarification; adopted proposed language in final rule.

#### *Section 230.7 Grant Requirements*

*Comment:* A grantee may need more than two years to complete the project and proposed the following language change to (c) as follows “The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process.”

*Response:* The Forest Service felt that the proposed change was consistent with the purpose of the CFP and provided the program with additional flexibility; adopted proposed language in final rule.

### **Regulatory Certifications**

#### *Regulatory Planning and Review*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under Section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

A Cost Benefit Analysis has been completed and emphasizes that the benefits for each established forest will vary, depending on characteristics of the forest land, the community, and the management objectives. Where these forests are located will also be dependent on the communities that support them; therefore, they could

occur in communities from rural to urban. Because there will be diversity among forests and among their benefits, this analysis used qualitative, as well as quantitative, methods to describe the potential benefits and costs of the CFP.

The primary cost of the CFP is the acquisition of the land itself. Additionally, the transfer of lands out of private ownership may reduce the tax base, or result in forgone economic benefits offered by development. The analysis assumed that development and associated activity will be established elsewhere without resulting in forestland conservation and the opportunity cost of lower economic activity will be off-set by the benefits provided by the community forest, such that the main analyzed costs are the cost of the acquisition and the tax revenue foregone by the local government unit. These costs were compared with the largely intangible benefits of protecting forest land, such as environmental goods and services from the land and nonmarket valued amenities, such as scenic views, but also included the economic value of retaining an active working forest in the local economy. Qualitative and quantitative evidence supported the assertion that community forests provide many benefits to communities, especially in areas threatened by conversion of private forest land.

This final rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor adversely affect State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues.

Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs. This final rule does not regulate the private use of land or the conduct of business. It is a grant program to local governments, Indian tribes, and qualified nonprofit organizations for purposes of acquiring land in fee-simple for resource conservation and open space preservation. By providing funding to eligible entities for land acquisition, the Federal Government will promote a variety of benefits from sustainable forest management including, but not limited to: Economic benefits such as timber and non-timber products; environmental benefits, including clean air and water, stormwater management, and wildlife habitat; 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.; benefits from serving as replicable models of effective forest stewardship for private landowners; recreational benefits such as hiking, hunting and fishing secured through public access.

The acquisition of land by eligible entities may affect the local real property tax base, depending on applicable state law and the tax status of the acquiring entity. The possible impact on the real property tax base cannot be ascertained, but it is assumed that any land going from taxable to nontaxable status would cause a commensurate shifting of the tax burden to other taxable properties or, alternatively, a reduction in local tax revenues.

The CFP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. The program is voluntary for each participating eligible entity.

#### *Project Compliance With the National Environmental Policy Act*

Project grants are subject to National Environmental Policy Act (NEPA) and must comply with agency NEPA implementing procedures as described in 40 CFR parts 1500–1508 as well as the Council on Environmental Quality’s NEPA procedures at 40 CFR parts 1500–1508. CFP grants are to be used for transferring title and ownership of private lands to third parties and will not fund any ground-disturbing activities. The Forest Service has concluded that CFP grants fall under the categorical exclusion provided in the Forest Service’s NEPA procedures for “acquisition of land or interest in land” 36 CFR 220.6(d)(6); 73 FR 43084 (July 24, 2008). As a result, CFP project grants are excluded from documentation in an environmental assessment or environmental impact statement.

#### *Proper Consideration of Small Entities*

This final rule has been considered in light of Executive Order 13272 regarding property considerations of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996. The Forest Service consulted with the Small Business Administration which concurred that the final rule for voluntary participation in the CFP does not impose significant direct costs on



small entities. This final rule imposes no additional requirements on the affected public. Entities most likely affected by this final rule are the local governments, qualified nonprofit organizations, and Indian tribes eligible to receive a grant through the CFP. The minimum requirements on small entities imposed by this final rule are necessary to protect the public interest, are not administratively burdensome or costly to meet, and are within the capabilities of small entities to perform. It does not compel the expenditure of \$100 million or more by any State, local or Indian tribal government, or anyone in the private sector.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the Agency has assessed the effects of this final rule on State, local, and Indian Tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more by any State, local or Indian tribal governments, or anyone in the private sector. Therefore, a statement under Section 202 of that Act is not required.

#### *Federalism*

The Forest Service has considered this final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Forest Service has determined that the rule conforms to the federalism principles set out in these Executive Orders. The rule would not impose any compliance costs on the States other than those imposed by statute, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on the proposed rule, additional consultation with State and local governments was determined to not be necessary.

#### *Controlling Paperwork Burdens on the Public*

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the Forest Service requested and received an approval of a new information collection.

#### *OMB Number: 0596—New*

Comments were sought on the information collection aspect of this rule at the proposed rule stage; none were received.

#### *Consultations and Coordination With Indian Tribes*

This final rule has tribal implications as defined in Executive Order 13175. Section 7A(a)(1) of the Cooperative Forestry Assistance Act establishes that Indian tribes as defined by Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) are eligible entities to participate in the CFP.

Indian tribes were invited to consult on the CFP proposed rule prior to review and comment by the general public. The consultation process was initiated September 30, 2010. The Deputy Chief for State and Private Forestry sent a letter to Forest Service regional leadership requesting that they initiate consultation. Each unit then initiated consultation with Indian tribes, providing them with information about the CFP, the proposed rule, how to request government-to-government consultation, and where to send comments. Consultation concluded March 7, 2011.

Three Indian tribes consulted with the Forest Service about the CFP, many Indian tribes discussed the CFP with Forest Service personnel, and three Indian tribes sent comments through the public comment process. Two regions of the United States Department of the Interior, Bureau of Indian Affairs (BIA) also sent comments through the public comment process. Indian tribal and BIA comments were analyzed separately from general public comments. The Forest Service incorporated the input received through consultation and the public comment process into the development of this final rule.

Through consultation and comments a number of Indian tribes questioned if they are on an even playing field with all other applicants, and asked if the CFP would provide priority to Indian tribes which have lost land base due to Federal land acquisitions in the past. The Forest Service will ensure that all applicants are given an equal opportunity. Specific tribal concerns, such as loss of land base, may be described in the application.

The Agency has determined that the CFP does not impose substantial direct compliance costs on Indian tribes. This rule does not mandate Indian tribe participation in the CFP, but does ensure they have an opportunity to apply. A more complete summary of tribal consultation may be found in the preamble of this rule, under “Government to Government Consultation with Indian Tribes”.

#### *No Takings Implementations*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and the Forest Service has been determined that the final rule does not pose the risk of a taking of constitutionally protected private property. This final rule implements a program to assist eligible entities to acquire land from willing landowners. Any land use restrictions are voluntarily undertaken by program participants.

#### *Environmental Impact*

The Forest Service has determined that this final rule falls under the categorical exclusion provided in Forest Service regulations on National Environmental Policy Act procedures. Such procedures exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions.” 36 CFR 220.6(d)(2); 73 FR 43084 (July 24, 2008). This final rule outlines the programmatic implementation of the CFP and has no direct effect on Forest Service decisions for its land management activities or on ground disturbing activities conducted by third-party entities.

#### *Energy Effects*

This final rule was reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It was determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

#### *Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Forest Service did not identify any State or local laws or regulations that are in conflict with this final rule or that would impede full implementation of this final rule. Nevertheless, in the event that such a conflict is identified, the final rule would not preempt the State or local laws or regulations found to be in conflict. Further, in that case, no retroactive effect would be given to this rule. The Forest Service would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

#### **List of Subjects in 36 CFR Part 230**

Grant programs, Grants administration, Community forest, State and local governments, Indian tribes,

Nonprofit organizations, Conservation, Forests and forest products, Land sales.

For the reasons set forth in the preamble, the Forest Service hereby amends part 230 of Title 36 of the Code of Federal Regulations by revising subpart A to read as follows:

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

■ 1. The authority citation for part 230 is revised to read as follows:

**Authority:** 16 U.S.C. 2103(d) & 2109(e).

■ 2. Revise Subpart A to read as follows.

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

Sec.

- 230.1 Purpose and scope.
- 230.2 Definitions.
- 230.3 Application process.
- 230.4 Application requirements.
- 230.5 Ranking criteria and proposal selection.
- 230.6 Project costs and cost share requirements.
- 230.7 Grant requirements.
- 230.8 Acquisition requirements.
- 230.9 Ownership and use requirements.
- 230.10 Technical assistance funds.

### **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.

Dated: October 14, 2011.

Arthur L. Blazer,

Deputy Under Secretary, NRE.

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## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 1**

RIN 2900-AN95

#### **Sharing Information Between the Department of Veterans Affairs and the Department of Defense**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) regulation pertaining to the applicability of certain VA regulations that restrict the disclosure of certain medical information to the Department of Defense (DoD). This interim final rule removes a restriction that is not required by the applicable statute, 38 U.S.C. 7332(e), and is inconsistent with the intent and purpose of that statute.

**DATES:** *Effective Date:* This interim final rule is effective October 20, 2011. Comments must be received by VA on or before December 19, 2011.

**ADDRESSES:** Written comments may be submitted through [www.va.gov](http://www.va.gov).