



U.S. Forest Service

Community Forest and Open Space Conservation Program Frequently Asked Questions

(September 2013)

General

What is meant by the term “Community Forest”?

The CFP rule defines Community Forest as “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 benefits are economic, ecological, educational and recreational. A complete definition of community benefits can be found in the rule (230.2 Definitions. *Community benefits*).

How much money will be available in this round of request for applications (RFA)?

The amount of funding available for the Community Forest Program in 2014 will not be known until Congress appropriates a fiscal year 2014 budget. The Administration proposed \$4 million of funding for the program. However, Congress may decide to appropriate a different amount.

What does the grant application include?

The application package includes everything listed under section #4 of the RFA (application requirements). In the case of non-profits and local governments, the application is sent first to the State Forester, who then sends it to the Forest Service. In the case of an Indian tribe, the application is sent directly to the Forest Service.

Application components: (1) the project description- no more than 8 pages; (2) no more than 2 pages worth of maps (eight and half inches by eleven inches in size); (3) grant forms specified in 4(b); and (4) the draft community forest plan specified in 4(e)(4).

Why is it important for the application to show how the Community Forest Program is part of a larger landscape initiative?

The extent to which the community forest contributes to a landscape conservation initiative is one of the ranking criteria that will be used for project selection (Final Rule section 230.5 Ranking criteria and proposal selection (b)(4)). The applicant must explain the relationship of the property within and its contributions to a larger landscape initiative in the application (Final Rule section 230.4 Application requirements (b)(6)).

If I have additional questions, where can I submit them?

Please contact the appropriate Forest Service regional contact identified in the RFA with any questions or email questions to communityforest@fs.fed.us. These frequently asked questions will be updated periodically.

Eligibility**Is property owned by a unit of government eligible for the CFP?**

No. The rule defines eligible lands as private forest lands (230.2 Definitions. *Eligible lands*).

If property already has a conservation easement in place, is it eligible for the CFP?

No. The statute and rule defines eligible lands as private forest lands that are threatened by conversion to nonforest uses (230.2 Definitions. *Eligible lands*). A conservation easement on a property has removed the threat of conversion.

We have identified a project but currently, the property is not at least 75% forest as required by the Final Rule. Can a project that needs reforestation or restoration qualify for funding?

It may be possible if a strong case can be made for the community benefits of the project and the organization has plans and sufficient resources to reforest the property quickly upon acquisition. The plans for reforestation and restoration will need to be outlined in the community forest plan. Community benefits are defined in the Final Rule in section 230.2 Definitions. *Community benefits*.

Can land be part of the Forest Legacy Program and the Community Forest Program?

A proposed application cannot be submitted for funding consideration simultaneously for both the CFP and the Forest Legacy Program (Final Rule section 230.3 (e)). However, if a project is submitted for consideration but not funded in one program, it may be submitted for funding by the other program during the next application cycle, if it qualifies.

Can a CFP application include multiple tracts or different owners?

Yes, an application can be for multiple tracts, even if multiple owners are involved.

Can a CFP application include non-contiguous tracts?

Yes, a community forest can be made up of non-contiguous tracts, but the applicant must explain how these parcels make sense as a community forest.

What types of nonprofit organizations are eligible to apply for funding?

The rule (230.2 Definitions. *Qualified nonprofit organization*) identifies qualified nonprofit organizations as 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 operated in accordance with one or more of the conservation purposes specified in Section 170 (h)(4)(A) of that Code. These conservation purposes include:

- The preservation of land areas for outdoor recreation by, or for the education of, the general public,

- The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or
- The preservation of a historically important land area or certified historic structure.

The rule requires that during the application process an applicant must provide documentation that they are an eligible entity and that the proposed acquisition is of eligible property (Final Rule section 230.4 Application requirements (a)).

For the purposes of the CFP, a qualified organization must also have a commitment to protect in perpetuity the purposes for which the tract was acquired under the CFP and 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.

The rule mentions that all surface and subsurface mineral rights must be purchased, if possible. Why is this required?

Mining and nonrenewable resource extraction that would disturb the surface are defined by the rule as nonforest uses and are not allowed (Final Rule section 230.2 Definitions. *Nonforest uses*).

If there are severed mineral rights on a proposed CFP property, these rights must be acquired so that such uses are controlled by the holder of the community forest. If they cannot be obtained, then the grant recipient must follow the retention of qualified mineral interest requirements as outlined in the Internal Revenue Service regulations (26 CFR 1.170A-14(g)(4). If neither of these conditions can be met, the property is not eligible for funding through the CFP. (See Final Rule section 230.8 Acquisition requirements (3)).

Are there restrictions on other types of rights, contracts, or other encumbrances?

Yes, the rule states that “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 (Final Rule section 230.8 Acquisition requirements (a)(4)(1).”

Applications and Funding Decisions

How detailed must the draft community forest plan that is submitted with the application be?

The rule requires that a draft plan be submitted with the application (Final Rule section 230.4 Application requirements (c)(4)). The rule is not explicit in how detailed this draft plan must be. However, much of the information in the community forest plan will be used during the project evaluation process, and therefore, the more complete the plan, the better. The definition and components of the community forest plan can be found in the rule in section 230.2 Definitions. *Community forest plan*.

How will decisions be made as to what projects to fund?

The application process is explained in the Final Rule section 230.3, application requirements in 230.4 and Ranking and Proposal Selection in section 230.5 of the proposed rule. For the current evaluation cycle, projects will be evaluated by a national panel of Forest Service Staff that will review each application and rank the projects. The Forest Service will give priority to applications that maximizes the delivery of community benefits as defined by the rule in section 230.5 Ranking criteria and proposal selection.

Tribal Questions

Can only federally recognized tribes apply for funding for a project?

Yes, only federally recognized Indian tribes may apply for funding. The term “Indian tribe” is given in section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

Will applications from tribes be reviewed separately from local units of government and non-profit organizations? Will there be a fixed amount or percentage that will go to tribes?

All applications, including those from Indian tribes, will be considered together and all eligible entities will have access to a single source of funds. The rule states (Final Rule section 230.5 Ranking criteria and proposal selection (b)) “The Forest Service will evaluate all applications received by the State Foresters or equivalent officials of the Indian tribe...”

Can a tribe apply for funding for a project in ancestral lands if the Tribal government is now located in another State?

Yes, provided that all other program requirements are satisfied. A community forest management plan is required and public access is required. It may be difficult to manage the lands as intended by the community forest program if there is not a local presence.

Are Tribal colleges and universities eligible for funding?

Eligible entities are defined as local governments, non-profit organizations, and federally recognized tribes; colleges and universities are not eligible for funding. However, colleges and universities may partner with an eligible entity to assist the eligible entity in acquiring the community forest through this program.

Use and Management of a Community Forest

What degree of public access must be allowed? Can it be closed to the public for certain times of the year?

Eligible lands are defined by the rule in part as “Private Forest Lands that: (3) if acquired by an eligible entity, can provide defined community benefits under the CFP and allow public access. (Final Rule section 230.2 Definitions. *Eligible lands*).

The rule defines Public Access as “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 (Final Rule section 230.2 Definitions *Public access*).” The rule further requires (Final Rule section 230.9b Ownership and use requirements) that the Grant recipient shall provide appropriate public access.

The management of public access must be outlined and discussed in the community forest plan (Final Rule section 230.2 Definitions. *Community forest plan* (7)). The plan must discuss any proposed limitations to protect cultural or natural resources. One of the community benefits on which a proposed project will be evaluated is recreational benefits such as hiking, hunting, and fishing secured through public access. Significant limitations on public access could render a project ineligible or have an impact on the competitiveness of a project.

Can hunting be allowed on property that is acquired through the Community Forest Program?

Recreational benefits including hunting are recognized as community benefits that can be provided by the CFP (Final Rule section 230.2 Definitions. *Community benefits*). However, allowing hunting is not a requirement of the program. As with other uses of a property, game management and hunting activities will need to be addressed in the community forest plan.

Can there be structures on land that enters the CFP?

Generally, structures are viewed as nonforest uses and are not allowed by the program. There are however, exceptions. If there is a bona fide need and it is supported by the community forest plan, there may be a caretaker building (Final Rule section 230.2 Definitions *Nonforest uses*). There may also be compatible recreational facilities, concessions and educational kiosks, energy development for onsite use, facilities associated with appropriate forest management and parking areas. These structures, facilities and parking areas must be identified in the community forest plan and must have only minimal impact to forest and water resources (Final Rule section 230.2 Definitions *Nonforest uses* 6). Existing structures, such as but not limited to communication infrastructure, do not disqualify a property from consideration, but when developing the community forest plan, the grant recipient must explain the utilization or demolition of existing structures and the proposed needs for further improvements (Final Rule section 230.2 Definitions. *Community forest plan* 6).

How long must the land remain in a forested condition? Can the use be changed in the future? Can it be sold?

The intent of the program is to establish community forest for community benefits by acquiring and protecting forestlands. The statute and the rule are clear that once a community forest is acquired by an eligible entity through the CFP, the community forest must remain in a forested condition in perpetuity and cannot be sold.

The final rule requires that (Final Rule section 230.8 (a)(5)) a notice of the grant agreement must be filed with the deed to the property. This notice requires that grant recipients manage the land consistent with the intent of the CFP and that the recipient will not convey or encumber the interest in the property. If the interest is sold or converted to nonforest use, the grant recipient must pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater (Final Rule section 230.9 Ownership and use requirements).

Must timber management occur on the property?

Sustainable forest management is an allowed but not required use. Economic benefits such as timber and non-timber products are viewed by the program as community benefits. The list of community benefits that can be derived from a project are outlined in the Final Rule section 230.2 Definitions. *Community benefits*.

The rule mentions economic benefits as a community benefit. What types of activities and products are economic benefits?

The rule defines economic benefits as timber and non-timber products resulting from sustainable forest management and tourism.

Appraisals

How recent must an appraisal be?

An appraisal must be an accurate representation of the market at the time of acquisition. Each appraisal has an effective date, when it is completed. Generally, the appraisal is considered to be representative of the market for one year; beyond that, the appraisal must be updated. An appraisal may be valid for less than one year if there are significant changes in the market either up or down.

The Final Rule mentions an appraisal review. Who does this appraisal review? Does the Forest Service do this appraisal review?

The grant recipient is responsible for identifying and working with a review appraiser that is qualified to complete an appraisal review in accordance with Federal Appraisal Standards. The rule requires that the grant recipient must provide documentation that the appraisal and associated appraisal review were conducted in a manner consistent with the Federal appraisal standards (Final Rule section 230.8 Acquisition requirements (a)(1)(i)). The Forest Service may choose to conduct spot checks of projects to ensure that the standard has been met.

Role of the State Forester or Equivalent Official

What is a State's long term role in the monitoring of tracts protected through CFP?

The Forest Service, not the State, is responsible for long term monitoring. See Final Rule section 230.9 Ownership and use requirements (d)(e).

What is the State's role in program implementation?

The State Forester receives applications from qualified nonprofits and local governmental entities and submits them to the Forest Service. As time and resources allow, the State Forester may:

Provide a review of each application to help the Forest Service determine 1) that the applicant is an eligible entity, 2) that the land is eligible, 3) that the proposed project has not been submitted for funding consideration under the Forest Legacy Program and, 4) whether the proposed project contributes to a landscape conservation initiative.

The State Forester may, at their discretion, provide assistance to an eligible entity in developing a community forest plan. Such assistance may be funded with a grant to the state if technical assistance needs are identified in the application and provided by state personnel.

Technical Assistance Funds

Are technical assistance funds available to eligibility entities to help them develop an application?

No. Technical assistance funds may only be provided to State foresters or equivalent officials of Indian tribes to help implement community forest projects. These funds will only be provided to States or Indian tribes with a funded CFP project within their jurisdiction. (Final Rule section 230.10 Technical assistance funds). The CFP applicant must contact the State Forester or equivalent official to determine technical assistance needs and request technical assistance funds in the application. Technical assistance funds are not subject to the 50-50 match requirement of acquisition funds.

Is a State's pre-award cost (such as providing technical assistance to an applicant) reimbursable?

Developing a project is not an allowable reimbursable cost. But, if a State assists an applicant with an allowable cost (such as a survey prior to the grant being awarded) this may be considered an allowable cost under the State's technical assistance grant if the project receives funds. Allowable costs are discussed in section 230.6 (b) of the Final Rule.

The rule discusses technical assistance funds to States or equivalent officials of Indian tribes (230.10).

If a State or Indian tribe were to receive these funds, how long would they have to spend them?

The rule allows such funds to be granted if a State or Indian tribe has a project funded within their jurisdiction. These funds will be available to the State or Indian tribe to provide technical assistance to the eligible entity that received the grant. This could be assistance in developing the community forest plan, survey work, and assistance with title work, mineral determination or other needs.

The initial grant period for both the project and technical assistance grant will be two years. If there is a need, the grant may be extended up to five years. Grant extensions are done at the discretion of the Forest Service and will only be granted if there are circumstances outside of the recipients control that have prevented acquisition and if there is a high likelihood of success if the grant is extended.

The technical assistance grant should be spent within the life of the project grant. If a property is closed on in six months and the grant is closed shortly thereafter, the technical assistance grant should be closed about the same time. The program requires the project grant recipient to complete the final community forest plan within 120 days of the land acquisition. If a State or Indian tribe were assisting in completing this plan, it would certainly be reasonable that the technical assistance grant remain open during this time.