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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 230

RIN 0596-AD23

Community Forest and Open Space Rule Revision

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule; request for public comment.

SUMMARY: This proposed regulation would allow Community Forest and Open Space Program (Community Forest Program) grant recipients to issue conservation easements to funding entities and, in some circumstances consistent with the program's purposes, convey community forest land to other eligible entities. The proposed regulation would also clarify definitions of program-specific terms, streamline the application process, and implement Office of Management and Budget (OMB) and the Department of Agriculture's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR parts 200 and 400).

DATES: Comments on this proposed regulation must be received in writing by [insert 90 days from the date of publication in the **FEDERAL REGISTER**].

ADDRESSES: Send written comments to USDA, Forest Service, Attention: Maya Solomon, Cooperative Forestry Staff, 1400 Independence Avenue, SW, Mailstop 1123, Washington, D.C. 202-205-1376. Electronic comments may be sent to communityforest@fs.fed.us. If comments

are sent electronically, do not duplicate via regular mail. Comments should only address issues relevant to this proposed regulation. Make reference to the specific section being addressed, and explain any suggested changes.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0596-0227. Comments should be sent to the address listed in the above paragraph.

All comments, including provided names and addresses, will be placed in the record and made available for public inspection and copying. The public may inspect comments received on this proposed rule in the Cooperative Forestry Office, State & Private Forestry Deputy Area, Yates Building-Third Floor, 1400 Independence Avenue, SW, Washington, D.C. Visitors must call (202) 205-1376 to facilitate building entry.

FOR FURTHER INFORMATION CONTACT: Maya Solomon, Program Specialist, State and Private Forestry, Cooperative Forestry Staff, (202) 205-1376. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Community Forest Program is authorized by Section 8003 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 1651). On October 20, 2011, the Forest Service issued regulations (36 CFR 230 Subpart A) implementing the program. After selecting and awarding the first round of grants under the current version of 36 CFR 230

Subpart A, the Agency identified some inconsistencies and inefficiencies in the regulation that hinder the Agency's ability to efficiently and effectively implement the program.

One of the critical inconsistencies is found in Section 230.8, which specifies the acquisition requirements for this program. Subpart 230.8(a) (5) lists the documents and statements that must be recorded with the deed as part of the Notice of Grant Requirement. It states that, "...the grant recipient will not convey or encumber the interest in real property, in whole or in part, to another party...". This language is more restrictive than necessary and is inconsistent with the grant assurances (OPM Form 424D), which allow a grant recipient to convey or encumber an interest in real property with prior approval from the granting Agency. Furthermore, the restrictive language prevents eligible entities from using funding mechanisms that require establishment of a conservation easement, even though this arrangement could be compatible with Community Forest Program requirements. This provision also prevents the transfer of ownership interest in a Community Forest to another eligible entity if the original owner becomes unable to hold or maintain the parcel. This proposed regulation is designed to allow Community Forest Program grant recipients to grant conservation easements to funding entities, and, in some circumstances, to convey land to another eligible entity when consistent with the program's purposes.

Additionally, the Agency seeks to reduce the burden of paperwork and information collections on applicants. Currently, the Agency requests an eight-page application, a map of the parcel in question, all forms required for issuance of a federal grant, and a draft community forest plan. The current application process is overly burdensome and all elements of the process are not necessary to ensure the selection of high-quality community forest projects that meet the intent of the program.

The Agency also seeks to clarify definitions and refine provisions regarding the use of technical assistance funds. The language clarifies how technical assistance should be determined and requested. Some of the definitions in the current regulation are unclear and confuse the intent of the program. The Agency seeks to provide clarification and reduce the amount of confusion caused by the unclear definitions.

Lastly, the Agency is eliminating the separate cost share and grant requirements for non-profit organizations, Tribal governments, and local governments in ((§§230.6(c) and 230.7(a)(2)). The Agency will follow the guidance outlined in the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR parts 200 and 400) for all eligible entities.

The changes made to the current version of this rule will apply to new grants as well as grants awarded prior to the issuance of this rule.

Need for the Proposed Regulation

The Forest Service is revising this regulation to correct inconsistencies and inefficiencies identified in administering the first round of grants, to clarify confusing language, reduce the paperwork collection burden for applicants, and to update grant requirements to comply with current grant regulations. These changes will help ensure that the regulations align with the intent and purposes of the authorizing legislation.

Project Compliance With the National Environmental Policy Act

Project grants are subject to the National Environmental Policy Act (NEPA) and must comply with the Agency's NEPA implementing procedures as described in 36 CFR part 220, as well as the Council on Environmental Quality's NEPA procedures at 40 CFR parts 1500-1508.

Community Forest Program grants are used to transfer title of private lands to third parties and will not fund any ground-disturbing activities. The Forest Service has concluded that Community Forest Program grants fall under the categorical exclusion provided in the Forest Service's NEPA procedures for "acquisition of land or interest in land" 36 CFR part 220.6(d)(6); 73 FR 43084 (July 24, 2008). As a result, Community Forest Program project grants are excluded from documentation in an environmental assessment or impact statement.

The changes made to the current version of this rule will apply to new grants as well as grants awarded prior to the issuance of this 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). However, the Community Forest Program is deemed exempt from the Uniform Act because it meets the exemption criteria stated at 49 CFR part 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 Community Forest Program be appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Federal Appraisal Standards) in order to determine the non-Federal cost share of a parcel of privately-owned forest land. The

Federal Appraisal Standards are contained in a readily available public document, (http://www.usdoj.gov/enrd/Legal_Documents.html). A grant recipient is responsible for assuring that the appraisal of the Community Forest Program tract is done in conformance with the Federal Appraisal Standards. The Federal Appraisal Standards shall be used to determine reimbursement for 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 Internal Revenue Service (IRS) regulations for a donation in land. The Forest Service may be available to assist applicants with the appraisal and associated appraisal review, and will conduct spot checks to assure compliance with Federal Appraisal Standards.

Regulatory Certifications

Regulatory Planning and Review

This proposed rule has been reviewed under USDA procedures and Executive Order 12866. The OMB has determined that this proposed rule is non-significant for purposes of Executive Order 12866.

This proposed rule does not regulate the private use of land or the conduct of business. It is a grant program for local governments, Tribal Governments, and qualified nonprofit organizations for purposes of acquiring land for resource conservation and open space preservation. By providing funding to eligible entities for land acquisition, the Federal Government will promote the non-monetary benefits of sustainable forest management. These benefits include: improved air and water quality, wildlife and fish habitat, forest-based educational programs including vocational education programs in forestry, replicable models of

effective forest stewardship for private landowners, open space preservation, carbon sequestration, and enhanced recreational opportunities including hunting and fishing.

Proper Consideration of Small Entities

This proposed rule has been considered in light of Executive Order 13272 regarding regulatory impacts on small entities and the Small Business Regulatory Enforcement Fairness Act of 1996. Voluntary participation in the Community Forest Program does not impose significant direct costs on small entities. This proposed rule imposes no additional requirements on the affected public. Entities most likely affected by this proposed rule are the local governments, qualified nonprofit organizations, and Tribal governments eligible to receive a grant through Community Forest Program. The minimum requirements imposed on small entities by this proposed rule are necessary to protect the public interest and should be within the capabilities of small entities to perform; they should not be administratively burdensome or costly to meet. The proposed rule would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. 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. Under these circumstances, the Forest Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this proposed rule on State, local, and Indian Tribal governments and the private sector. This proposed 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 proposed 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 or Tribal governments other than those imposed by statute, and would not have substantial direct effects on the States or Tribal governments, on the relationship between the Federal Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the Agency will consider if any additional consultations will be needed with the State, local governments, and/or Tribal governments prior to adopting a final rule.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. §§ 3501-3521], the Forest Service is requesting a new information collection that will supersede 0596-0227.

Title: Community Forest and Open Space Conservation Program.

OMB Number:

Type of Request: New Information Collection.

Abstract: The purpose of Community Forest Program is to achieve community benefits through grants to local governments, Tribal Governments, and qualified nonprofit organizations to establish community forests by acquiring and protecting private forestlands. This proposed rule

includes information requirements necessary to implement the Community Forest Program and comply with grants regulations and OMB Circulars. The information requirements will be used to help the Forest Service:

- (1) Determine that the applicant is eligible to receive funds under the program,
- (2) Determine if the proposal meets the qualifications in the statute and regulations,
- (3) Evaluate and rank the proposals based on standard, consistent information, and
- (4) Determine if the project's costs are allowable and sufficient cost share is provided.

Local governmental entities, Tribal Governments, and qualified nonprofit organizations are the only entities eligible for the program and therefore are the only organizations from which information will be collected.

The information collection currently required for a request for proposals and grant application is approved and has been assigned the OMB Control No. 0596-0227.

Estimated Annual Number of Respondents: 150.

Estimated Burden per Response: 22.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 150.

Estimated Total Annual Burden on Respondents: 3,300 hours.

Comments: Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) The accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consultations and Coordination With Indian Tribal Governments

This proposed rule has tribal implications as defined in Executive Order 13175. Section 7A (a) (1) of the Cooperative Forestry Assistance Act establishes that federally recognized Indian tribes are eligible to participate in the Community Forest Program. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); the Executive Order of November 6, 2000, "Consultation and Coordination With Indian Tribal Governments" (EO 13175); and with the directives of the Department of Agriculture (DR 1350-001); we have determined that this proposed rule may affect Indian Tribes. Tribal consultation will be coordinated through local and regional processes in coordination with the Washington Office of the Forest Service.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally-protected private property. This proposed rule implements a program to assist eligible entities in acquiring land from willing sellers. Any land

use restrictions on Community Forest Program parcels are agreed to voluntarily by program participants.

Environmental Impact

This proposed rule outlines processes for implementation of the Community Forest Program. Forest Service regulations at 36 CFR 220.6(d)(2) exclude “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions” from documentation in an environmental assessment or environmental impact statement. The Department’s preliminary assessment is that this proposed regulation falls within this category of actions, and that no extraordinary circumstances require preparation of an environmental assessment or environmental impact statement. A final determination will be made before publication of the final rule.

Energy Effects

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

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Forest Service has not identified any State or local laws or regulations that are in conflict with this proposed rule or that would impede full implementation of this proposed rule. Nevertheless, in the event that such a conflict is identified, the proposed rule would not preempt the State or local laws or regulations found to be in conflict. However, in that case, no

retroactive effect would be given to this rule and 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, State and local governments, Tribal governments, Nonprofit organizations, Conservation, Forests and forest products, Land sales.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 230 of Title 36 of the Code of Federal Regulations as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

1. The authority citation for part 230 continues to read as follows:

Authority: 16 U.S.C. 2109.

2. Subpart A is revised 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 (Community Forest Program), established under Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). Under the Community Forest Program, 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 Community Forest Program 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, wildlife habitat, and cultural resources;

(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 developed with community involvement that guides the management and use of a community forest and includes the following components:

- (1) A description of all purchased tracts and cost share tracts, including acreage and county location, land use, forest type and vegetation cover;
- (2) Objectives for the community forest and strategies to implement those objectives;
- (3) A description of the long-term use and management of the property;
- (4) Community benefits to be achieved from the establishment of the community forest;
- (5) A description of ongoing activities that promote community involvement in the development and implementation of the Community Forest Plan;
- (6) Plans for the utilization or demolition of existing structures and proposed needs for further improvements;
- (7) A description of public access and the rationale for any limitations on public access, such as protection of cultural or natural resources or public health and safety concerns; and
- (8) Maps of sufficient scale to show the location of the property in relation to roads, communities, and other improvements as well as nearby parks, refuges, or other protected lands and any additional maps required to display planned management activities.

Eligible entity. An organization that is qualified to acquire and manage land, limited to the following:

- (1) 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.

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

(3) Qualified nonprofit organization. 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)). 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.

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, including Indian reservations and allotment land,

(3) Can provide defined community benefits under the Community Forest Program and allow public access if acquired by an eligible entity.

Equivalent officials of Indian tribes. Individual(s) designated and authorized by the Indian tribe to manage the forest proposed for acquisition.

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 incompatible nonforest uses.

Grant recipient. An eligible entity that receives a grant from the Forest Service through the Community Forest Program.

Landscape conservation initiative. A conservation or management plan or activity that identifies conservation needs and goals of a locality, state, region, or Tribe. Examples of initiatives include community green infrastructure plans, a community or county land use plan, a Statewide Forest Action Plan, etc. The conservation goals identified in the plan must correspond with the community and environmental benefits outlined for the Community Forest Program project.

Nonforest uses. Uses other than forest management that may be compatible or incompatible with maintaining community forest purposes.

(1) Compatible nonforest uses that may be compatible with a community forest as part of an undeveloped landscape may include:

(i) Cultivated farmland, pasture, grassland, shrubland, open water, and wetlands;

(ii) Low-impact structures or facilities that support the purposes of the community forest and the Community Forest Program, such as recreational facilities, trails, concession and educational kiosks, energy development for onsite use, facilities associated with appropriate forest management, and parking areas.

(2) Incompatible nonforest uses are activities that threaten forest cover and are inconsistent with the Community Forest Plan. These uses may include, but are not limited to:

(i) Subdivision;

(ii) Residential development, except for a caretaker building;

(iii) 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;

(iv) Industrial use, including the manufacturing of products;

(v) 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

(vi) Structures, facilities, or organized, continuous, or recurring activities that disturb or compact the surface and/or impact forest and water resources in a manner that threatens the benefits and objectives of the community forest.

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 Community Forest Program. The RFA will be posted to <http://www.grants.gov> and other venues. The RFA will include the following information:

- (1) The process and timeline 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) Additional information as the Forest Service determines appropriate.

(b) Pursuant to the RFA, interested eligible entities will submit an application for program participation to:

- (1) The State Forester or equivalent official, for 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, official identified in 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, 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 project contributes to a landscape conservation initiative.

(e) If an applicant seeks technical assistance from the State Forester, nontribal applicants should contact the State Forester to discuss what technical assistance is needed and confirm that the State Forester is willing to provide that assistance. Tribal applicants should work with their equivalent officials (as defined in § 230.2) to discuss and arrange similar technical assistance needs. Applicants must include a separate budget that outlines the financial needs associated with technical assistance activities (§ 230.10).

(f) A proposed application cannot be submitted for funding consideration simultaneously for both the Community Forest Program and the Forest Service's Forest Legacy Program (16 U.S.C. 2103c).

§ 230.4 Application requirements.

An application must include:

(a) Documentation verifying that the applicant is an eligible entity and that the proposed acquisition is of eligible lands.

(b) Details of 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 and plans for utilization or demolition of existing structures;

(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) Objectives of the community forest;

(2) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;

(3) 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;

(4) Description of the planned public access and the rationale for any proposed limitations such as protection of cultural or natural resources, or public health and safety concerns; and

(5) 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.

(6) If the project is within the designated boundary of a federal management unit, a letter of support for the project from the federal land manager.

(7) A description of the resources that will be used to maintain and manage the property as a community forest in perpetuity.

(d) Information regarding the proposed land acquisition, including:

(1) A proposed project budget including a table and/or narrative detailing the source/type of non-federal cost share and all allowable expenses associated with the project (§ 230.6)

(2) Requests for State Forester, or equivalent official of Indian tribes, technical assistance in Community Forest Plan preparation should be listed separately in the budget, along with their estimated costs of providing assistance (§ 230.10);

(3) The status of due diligence, as documented by a signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(4) Description and status of cost share (secure, pending, commitment letter, etc.) (§ 230.6);

(5) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(6) The proposed timeline for completing the acquisition and establishing the community forest; and

(7) Long term management costs and funding source(s).

(e) Applications must comply with the Uniform Federal Assistance Regulations (2 CFR parts 200 and 400).

§ 230.5 Ranking criteria and proposal selection.

The Forest Service will evaluate all applications received by the State Foresters or equivalent officials of the Indian tribes and award grants based on the following criteria:

- (a) Type and extent of community benefits provided (§ 230.2);
- (b) Extent and nature of community engagement in the establishment and long-term management of the community forest;
- (c) Extent to which the community forest contributes to a landscape conservation initiative;
- (d) Likelihood that, if unprotected, the property would be converted to nonforest uses;
- (e) Amount and proportion of cost share leveraged;
- (f) Extent of due diligence completed on the project, including cost share committed and status of appraisal;
- (g) Costs to the Federal government; and
- (h) Additional considerations as may be outlined in the RFA.

§ 230.6 Project costs and cost share requirements.

(a) The Community Forest Program 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:

- (1) Appraisals and appraisal reviews;
- (2) Land surveys;
- (3) Legal and closing costs;
- (4) Development of the Community Forest Plan; and
- (5) Title examination.

(c) The principles and procedures for determining allowable costs for grants are outlined in 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements.

(d) Allowable 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 §230.6(b) completed as part of the application.

(e) Cost share contributions can include cash, in-kind services, or donations and must:

- (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, as defined in §230.2; and

(6) Be accomplished within the grant period.

(f) Cost share contributions may include the purchase or donation of other 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 Community Forest Program and community forest objectives; such donations need to meet the acquisition requirements specified under § 230.8 (a) (1)(ii).

(g) For purposes of calculating the cost share contribution, the grant recipient may request inclusion of project due diligence costs, such as title review and appraisals, incurred prior to issuance of the grant. These pre-award costs may have been incurred up to one year prior to the issuance of the grant, but cannot include the purchase of Community Forest Program land, including cost share tracts.

§ 230.7 Grant requirements.

(a) Once an application is selected, funding will be obligated to the grant recipient through a grant.

(1) The following grant forms and supporting materials must be completed after project selection in order to receive the grant:

(i) An Application for Federal Assistance (Standard Form 424);

(ii) Budget information (Standard Form 424c—Construction Programs);

(iii) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d— Construction Programs); and

(iv) Additional forms, as may be required to award the grant.

(2) The grant paperwork must adhere to the requirements outlined in 2 CFR parts 200 and 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) 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.

(c) The Forest Service must approve any amendment to a proposal or request to reallocate funding within a grant proposal.

(d) The grant recipient must comply with the requirements in § 230.8(a) of this subpart before funds will be released.

(e) After the grant has closed, grant recipients must 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 Community Forest Program project tracts and cost share tracts, if applicable.

(f) Any funds not expended within the grant period must be de-obligated and revert to the Forest Service for redistribution.

(g) 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 Community Forest Program.

§ 230.8 Acquisition requirements.

(a) Prior to closing on an acquisition, grant recipients participating in the Community Forest Program must complete the following, which applies to all tracts, including cost share tracts:

(1) Complete an appraisal:

(i) For lands purchased with Community Forest Program 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) 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, 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 Community Forest Program funds must not be subject to encumbrances or agreements of any kind that would be contrary to the purpose of the Community Forest Program .

(ii) Title insurance must not be a substitute for acceptable title.

(5) The grant recipient must provide all necessary due diligence documentation to regional Forest Service program managers and allow at least 60 days for review and acceptance.

(b) At closing, record a Notice of Grant Requirement with the deed in the lands record of the local county or municipality. This document must:

(1) State that the property (including cost share tracts) was purchased with Community Forest Program funds;

(2) Provide a legal description;

(3) Identify the name and address of the grant recipient who is the authorized title holder;

(4) State the purpose of the Community Forest Program;

(5) Reference the Grant Agreement with the Forest Service (title and agreement number) and the address where it is kept on file;

(6) State 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 Community Forest Program;

(7) State that the Community Forest may not be sold and will not be conveyed or transferred to another eligible entity or encumbered in whole or in part, to another party without

prior written permission and instructions from the Forest Service and when consistent with the purposes of the Community Forest Program; and

(8) State that the grant recipient will manage the interest in real property consistent with the purpose of the Community Forest Program.

§ 230.9 Ownership and use requirements.

(a) Grant recipients shall submit a final Community Forest Plan for Forest Service review within 120 days of the land acquisition and update the plan periodically to guide the management and use of the community forest.

(1) Grantees are encouraged to work with their State Forester or equivalent official of their Indian tribe for technical assistance when developing or updating the Community Forest Plan. In addition, eligible entities are encouraged to work with technical specialists such as professional foresters, recreation specialists, wildlife biologists, and outdoor education specialists when developing Community Forest Plans.

(2) Reserved.

(b) Grant recipients shall provide public access in accordance with the Community Forest Plan.

(c) Recipients must manage the property in a manner consistent with the purposes of the Community Forest Program. In the event that a grant recipient sells or converts a parcel of land acquired under the Community Forest Program to nonforest uses or any use inconsistent with the purposes of the Community Forest Program, 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. For the purposes of this calculation, the

parcel's appraised value will be the parcel's full fair market value. The impact of subsequent encumbrances, such as the imposition of conservation easements consistent with the purposes of this program, will not be considered in appraising the parcel's fair market value; and

(2) Not be eligible for additional grants under the Community Forest Program.

(d) For Indian tribes, land acquired using a grant provided under the Community Forest Program must not be sold, converted to nonforest uses or a use inconsistent with the purpose of the Community Forest Program, or converted to land held in trust by the United States on behalf of any Indian tribe.

(e) Every five years, grant recipients shall submit a self-certifying statement to the regional Forest Service Program Manager confirming that the property has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the Community Forest Program.

(f) Grant recipients are subject to periodic spot checks conducted by the Forest Service to verify that property acquired under the Community Forest Program has not been sold or converted to nonforest uses or any use inconsistent with the purpose of the Community Forest Program and that the current Community Forest Plan complies with defined minimum requirements in §230.2.

§ 230.10 Technical assistance funds.

Community Forest Program technical assistance funds may be provided to State Foresters or equivalent officials of Indian tribes through an administrative grant to help implement projects funded through the Community Forest Program. These funds are separate from the project funds

and do not have a cost share requirement. Section 7A (f) of the authorizing statute limits the funds allocated to State Foresters or equivalent officials of Indian tribes 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. Funds will only be provided to States or Indian tribes that:

(a) Have a Community Forest Program project funded within their jurisdiction, and

(b) Indicate the financial need and purpose of technical assistance in their Community Forest Program application.

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Chief,
Forest Service
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