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WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

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March 7, 2011

Community Forest Program
US Forest Service, State & Private Forestry
1400 Independence Ave., SW, Code 1123
Washington, DC 20250

RE: RIN 0596-AC84; Proposed rule on Community Forest & Open Space Conservation Program

To Whom it May Concern:

The Washington State Department of Natural Resources (DNR) appreciates the opportunity to review and provide feedback on the proposed Community Forest & Open Space Conservation Program (CFP) rulemaking. We fully support the conceptual underpinnings of the program and concur in its complementary nature with other Cooperative Forestry Assistance Act programs. We feel the level of interest in the program among communities, landowners and forest conservation organizations would be very high in Washington State.

The program also has an important linkage to other initiatives in Washington State related to conserving working lands and community benefits. In addition to administering State & Private Forestry programs and its other many duties, DNR manages 2.1 million acres of forest land in trust to generate revenue for public trust beneficiaries like K-12 schools. In some cases, lands that are in close proximity to developing areas become difficult to manage for revenue-generating purposes and DNR must consider land adjustments in order to meet its mission. We have therefore proposed to create a new "Community Forest Trust" into which lands at-risk of conversion could be transferred. The new designation would allow DNR to keep at-risk lands in an undeveloped character and manage them at a lighter intensity, while acquiring replacement lands more suitable for revenue generation. We see many parallels with the CFP.

In reviewing the proposed rule, however, we find several reasons for concern about the program's design, functionality and DNR's ability to support administrative needs.

Program Purpose

There is a need to clearly differentiate between the purposes of CFP and those of Forest Legacy. By virtue of the program's name, one assumes a certain proximity requirement to communities and developed areas but the proposed definitions of "community benefits", "community forest" and "eligible land" at §230.2 fail to make this clear. As the definitions are written, "working forest" parcels that would otherwise qualify for Forest Legacy program purposes would also technically meet CFP requirements with the sole

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exception of required contribution to a "landscape conservation initiative." Although the proposed rule at §230.3(e) states that applications cannot be simultaneously submitted for Legacy and CFP, there remains no substantive distinction between the two. Perhaps this distinction is intended to be clarified clarification in the Request for Proposals described at §230.3(a) that the Forest Service will issue, but the rule should specify as much.

Application Process & Requirements

DNR is intimately familiar with the lengthy, convoluted and complex process involved in any major land transaction. Our experience causes us to be greatly concerned with any implicit or explicit official certification a State Forester's approval may bestow upon an application, and especially legal elements such as land value appraisals, land survey documents, title records and so on. The rule at §230.4(d)(2) requires the status of due diligence for such items be included in an application. The extent to which the Forest Service expects that a State Forester certify this information is unclear in the rule as it goes to "review" of applications and the 'eligibility' of land in a proposed project [e.g., §230.3(c)(2)], and "assessment" of an application in forwarding it to the Forest Service [§230.3(d)(1)].

The development of a draft Community Forest Plan is among the application requirements at §230.4(c)(4) and applicants are encouraged to coordinate with State Foresters. However, the final plan is not required to be completed until 120 days following the acquisition [§230.9(a)] and responsibility for its approval is unclear. The rule at §230.9(e) requires ten-year updates to be approved by the Forest Service, but is silent on the final plan approval. We do not feel there is a need to delay management plan finalization beyond the acquisition stage of the project.

Ranking Criteria

There appears to be a redundancy in the description of ranking criteria among §230.5(a) and (b). The two listed "priorities" under (a) are substantively the same as the expanded "criteria" considerations listed under (b).

The relationship of a project to existing state planning documents, such as the Statewide Forest Resource Assessments & Strategies, is absent from the considerations under (b). Many assessments and strategies undertook a rigorous analysis of working forest conversion risks, as well as community forest needs and designated priority landscapes for these issues. Here again, clarifying CFP's relationship to Legacy would be beneficial because issues considered in the Assessment of Need in each state could logically inform a CFP proposal.

The National Association of State Foresters, through its involvement with many elements of State & Private Forestry program funding, policy and administration, should have a role in developing the RFP used to rank projects. This should include a process review of the prior year's project selections and whether the CFP is meeting its intended statutory purposes under the specified selection criteria. One organizational option would be to task the Forest Resources Coordinating Committee (FRCC) established by the 2008 Farm

Bill, of which NASF is a member, with assisting in criteria development and program improvements.

Ownership Requirements

The final rule at §230.9 should explicitly waive liability for States in the event of defaulted lands or noncompliance with the requirements of this subsection. Again, this relates to implicit or explicit certification of applicants and application materials referenced under the application process section in the process of State Foresters "reviewing" or "forwarding" applications. This subsection of the rule should also explicitly specify that monitoring compliance with the transaction and easement terms is the sole responsibility of the Forest Service.

Program Administration & Technical Assistance

The proposed rule at §230.10 indicates CFP technical assistance funds will only be provided when a project is approved and funded in a State Forester's jurisdiction. Within existing state agency and USFS State & Private Forestry program budgets, there is simply no way to afford program work and volume of applications that seem likely to be equivalent to Forest Legacy without additional, pre-award resources dedicated to doing so. The extent and type of technical assistance envisioned by the proposed rule is also unclear with the exception of explicit mention in the draft Community Forest Plan development. Applicants may expect assistance with transaction, grant documentation, budget development or other items that DNR would be unable to provide within its current budget. It is also likely that DNR and other agencies would be called upon to provide technical assistance beyond the completion of the grant period, such as for periodic management plan implementation assistance or the required ten-year updates.

Thank you for your time and attention to these concerns.

Sincerely,

Aaron Everett
State Forester