

# FLEP - FOREST LAND ENHANCEMENT PROGRAM PRIORITY PLAN; NEVADA DIVISION OF FORESTRY

## NEVADA DIVISION OF FORESTRY FOREST LAND ENHANCEMENT PROGRAM

### Eligibility and other related State Program Requirements.

All non-industrial private forest landowners (land must be in the State of Nevada) as defined in the definitions section, including those who produce forest products on a part-time or intermittent basis, who meet the requirements of this section, are eligible to apply for and receive assistance under the Program without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

To be eligible to receive cost-share funds under the Program, a landowner, or contiguous group of landowners, shall not own less than a minimum of 5 contiguous acres. Groups of landowners must be represented by a Home Owners Association, General Improvement District, Fire Safe Council or other Non-profit legal entity. Exceptions to this requirement will be considered on a case-by-case basis. A project must enhance a minimum of 2 acres to be approved for cost-share funding.

A landowner is only eligible to receive cost-share funds under the Program for treatment of not more than a total of 1,000 acres of non-industrial private forest land annually, except where the State Forester, with the concurrence of the Regional Forester, determines that significant public benefits would accrue from approval of a landowner treating up to 5,000 acres annually. In making a determination of significant public benefits, the State Forester and the Regional Forester shall consider, at a minimum, whether landowners who treat more than 1,000 acres but less than 5,000 acres annually are necessary to achieve cost-effective resource management objectives without unduly affecting Program participation of other eligible landowners.

The following **ARE** eligible:

- Individuals, including foreign owners.
- Joint owners.
- Groups/Associations.
- Corporations without publicly traded stock.
- Minor (legally responsible).
- Other private legal entities.
- Youth organizations, such as 4-H, FFA, and scout troops are eligible if the necessary forms used are signed by an adult who officially represents the organization.
- American Indian tribes or other Native American groups.

The following are **NOT** eligible.

- Federal, State, or local government agencies or entities.

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- American tribal allotment lands.
- Corporations with publicly traded stock.
- Entities that are principally engaged in manufacturing forest projects. That is, firms which derive more than 50% of gross income from manufacturing forest products, or entities providing public service of any type; these may include, but are not limited to, owners of or subsidiaries of:
  - Saw mills
  - Pulp mills
  - Paper mills
  - Plywood plants
  - Oleoresin plants
  - Power companies
  - Railroads
  - Outfitter/guides
  - Game/hunting preserves
  - Nurseries or Christmas tree farms

A minimum of 250 trees and shrubs to be planted is required to qualify for a windbreak or reforestation project. Landowners applying for Agroforestry (Windbreak Establishment) must either live on the property or have a property manager living on the property, and must have the project or house that the windbreaks will be protecting installed before completion of the plan.

To be eligible to receive cost-share funds under the Program a landowner must agree to conduct treatment according to the forest management plan and to maintain program practices for 10 years, unless otherwise specified by the State Forester.

The landowner who carries out practices under this Program shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with State and Federal applicable laws and regulations.

## **Forest Management Plan.**

Prior to receiving approval to implement any Program practice identified, eligible landowners shall have an approved forest management plan. The forest management plan shall be approved by a Service Representative and comply the outline attached.

To the extent deemed applicable by the Service Representative, where existing landowner management plans such as Tree Farm management plans, Forest Stewardship Plans or similar plans meet or can be amended to meet forest management plan requirements under this program, such plans shall satisfy the requirements of this section. In the application and use of pesticides, including biological, chemical and behavioral substances, practice performance shall meet all label requirements, State and Federal regulations, and local ordinances.

## **Application and Approval.**

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A landowner wishing to participate in the Program shall contact the local office of the State Forester who shall provide program assurances in this priority plan and any other information necessary to make application during the open application period which is determined by the State Forester. Applications shall not be approved unless cost-share funds are available. Approval of an application shall constitute an agreement by the State and the landowner to cost-share approved practices upon acceptable performance.

The State Forester or such official as the State Forester may designate, shall make basic eligibility determinations, including whether the applicant meets non-industrial private forest land ownership criteria and minimum and maximum acreage criteria and approve Program practices. The landowner shall be notified of such determination in writing by mail.

The State Forester or such official as the State Forester may designate, shall approve Program practices based on the following:

- Verification that the landowner has an approved landowner forest management plan.
- A determination whether the practice is needed and feasible.
- A determination that the practice is consistent with funding priorities established by the State Forester in the priority plan.

Upon approval of Program practices, a Service Representative or private consultant/qualified individual or firm, shall prepare a management plan that identifies the needed technical practices, specifications, and approximate time frame(s) for the implementation of the practice(s) to achieve the objectives of the landowner. Requirements of a management plan shall constitute the basis for determining acceptable performance upon practice completion. The plan must be accepted and signed by the Service Representative.

Upon approval of management plan:

- The landowner shall be notified of approved plan in writing.
- The landowner will agree to the program assurances in writing.
- The landowner will enter an agreement with the Farm Service Agency as a cooperator for cost-share.
- Such notice shall state that the landowner can begin implementing approved practices.

## **Payment to Landowners-Cost Share Projects.**

Distribution of funds identified for financial assistance to non-industrial private forest landowners will be distributed under a **reimbursable cost-share** agreement. Cost share rates are a maximum of 75% state reimbursed and 25% match by the landowner.

This is a reimbursement based cost-share. All federal funds paid to a landowner through this program are considered **taxable income by the IRS**. Therefore, the project capital must be provided up front by the landowner, and the 75% cost-share is a reimbursement of the project

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costs to be paid to landowners, but shall not exceed the actual out of pocket costs incurred by a participating landowner.

Non-Federal program funds and other donated assistance may be used to supplement Cost-share under the Program; however, the total of all funds and assistance shall not exceed 100 percent of the actual cost of practice implementation. Federal funds cannot be used as match.

To be eligible for cost-share payments, a landowner must complete each practice within twenty-four months of approval. However, if practice(s) are not completed in twenty-four months due to conditions beyond the landowner's control, the Service Representative may grant a twelve-month extension period.

Upon certification by the Service Representative that a practice has been completed in accordance with specifications, the cost-share reimbursement payment will be calculated using invoices, checks, in-kind hours and other documentation provided by the landowner to the Service Representative, and disbursed to the landowner by the Farm Service Agency at the request of the Service Representative. Service Representatives shall have the right of access to the landowner's property to inspect practices for the duration of the practice maintenance period.

A practice may consist of one or more component activities. A landowner may receive partial payment if allowed in the State Priority Plan, for completed components on the condition that that portion of the project can "stand alone" and the landowner agrees to complete the remaining component(s) of the practice within the time period specified by the Service Representative, not to exceed twenty-four months following approval to implement the practice, unless an extension is justified.

Where performance actually rendered does not meet the minimum specifications of a practice due to factors beyond the landowner's control, the State Forester or designee may approve cost-share payment under one of the following conditions:

The landowner repeats applications of components previously implemented or establishes additional eligible components under such terms and conditions as the Service Representative may require, in which case, the State Forester shall approve additional cost-sharing for additional or repeated components to the extent such measures are needed to meet the objectives of the forest management plan; or the landowner establishes to the satisfaction of the Service Representative that: A reasonable effort was made to meet the minimum requirements; and the practice, as performed, adequately meets the objectives of the landowner as described in the forest management plan. In case of death or in competency of any landowner, the State Forester shall approve cost-share to the successor if the successor agrees to maintain the practices for the duration of the required maintenance period.

Any landowner who may be entitled to any cost-share payment under this subpart may assign the right thereto, in whole or in part, under the following terms:

- Payments may be assigned only for performance of a Program practice.

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- A payment that is made to a landowner may not be assigned to pay or secure any preexisting debt.
- Neither the United States, the Forest Service, the Secretary of Agriculture, the State Forester nor any disbursing agent shall be liable in any suit if payment is made to an assignor rather than to an assignee, and nothing in this section shall be construed to authorize any suit against the United States, the Forest Service, the Secretary, the State Forester or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

No financial assistance or portion thereof due and owing any landowner shall be subject to any claim arising under State law by any creditor, except agencies of the United States Government.

### **Prohibitions.**

No financial assistance funds shall be paid for the following: Costs incurred before an application for cost-share is approved unless deemed qualified by the Service Representative in writing; repeating practices on the same site by the same landowners which have been implemented under any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner. No program funds shall be expended by a recipient for capital investments, capital improvements, purchase of land or any interest in land, or any interest in an endowment.

### **Recapture of Payment.**

If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from this program, the financial assistance funds shall be withheld or a refund of all or part of any Program payments otherwise due or paid that person shall be secured. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of this subpart.

If any landowner or successor takes any action or fails to take action, which results in the destruction or impairment of a prescribed practice for the duration of the practice, financial assistance funds shall be withheld or a recapture of all or part of any Program payments otherwise due or paid shall be secured based on the extent and effect of destruction and impairment.

If a landowner sells, conveys, or otherwise loses control of lands upon which there is a continuing obligation to maintain a practice and the new landowner does not agree to assume the responsibility for maintaining the practice, the landowner who was originally obligated to maintain the practice shall be liable to reimburse the States for all cost-share on such practices. Nothing in this section requiring the withholding or refunding of financial assistance funds shall preclude any penalty or liability otherwise imposed by law.

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Where the landowner has received cost-share for any practice that has been unsuccessful due to factors beyond the landowner's control, the Service Representative may require that the practice be re-established and shall approve cost-share for such activity.

### **Reconsideration.**

Any landowner, successor, or assignee who is dissatisfied with any determination made under the Program may request reconsideration by the State Forester and, if the matter is still not resolved, by the Regional Forester. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for requesting reconsideration. All decisions upon reconsideration shall be issued in writing.

NOT FOR DISTRIBUTION