

Sierra Nevada Conservancy
Draft Healthy Forests Grant Guidelines FY2011-12
Summarized Public Comments

Jessica Neff, Pacific Forest Trust
July 27, 2011

Dear SNC Board and Staff:

Thank you for the opportunity to review and comment on your latest draft of the Prop 84 Healthy Forests Grants Program Guidelines. The Sierra Nevada Conservancy has been a great partner in the Sierra both through the grants program and its role as a convener for the many issues that affect the Region. We think that many of the proposed changes to the grant program will help the SNC be strategic and have the greatest impact with its remaining Prop 84 funding.

First, we would like to thank you for clarifying that conservation easement projects are viable projects for funding under the Healthy Forests funding cycle. We think that conservation easements are an important tool in the overall health of California's forest landscape. Secondly, we would also like to commend you on formalizing the pre-application process. We have used this process in past grant rounds and have found the SNC staff's feedback extremely valuable.

Below are a few additional comments and questions we had regarding the current draft guidelines:

PAGE 5: II. A. Program Funding and Focus 2011-13: In the paragraph beginning with "In addition...", it would be helpful to clarify whether or not *conservation easement acquisition projects* must also track and re-invest into the project any revenue generated. It seems that it would be difficult for a conservation easement acquisition project to track and re-invest, so if this paragraph could clarify that conservation easements are not subject to this requirement, that would be helpful.

PAGE 12: III. G. 3. Conservation Easement Acquisition Requirements: Under the last bullet point, it would be helpful to have more clarification as to what would cause a conservation easement project to need a Phase I or Phase II Environmental Site Assessment. As a land trust accredited through the Land Trust Alliance for our exemplary use of the industry's Standards and Practices it is not generally our practice to do a Phase I or II Environmental Assessment on easement projects unless there is some cause for concern based on past land use. Additionally, this is not a requirement that we have seen in working with other State funders such as the Wildlife Conservation Board.

PAGE 18: IV. E. Project Category Prioritization: We would prefer Alternative 1 and also think conservation easement projects represent a more concrete on-the-ground

project than pre-project activities for site improvement projects or acquisition projects and should be given a higher point value over these types of pre-project activities. Also, in Alternative Two, it is a little confusing what the difference is between the second and third bullet points. Does the second bullet point mean to say “Pre-Project due diligence projects that ready on-the-ground site improvements or ***pre-project due diligence projects that ready*** the acquisition of conservation easements”?

Thank you again for providing us with the opportunity to respond and comment on the Grants Program Guidelines!

Sincerely,

Jessica Neff

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Jessica Neff
Conservation Project Manager

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SNC response:

- *Changes made - Clarifications were made specifying that any revenue generated directly from the use of grant funds (e.g. sale of forest products) need to be re-invested in the project. Future revenue from the property (such as in the case of a conservation easement) would not be subject to this provision as it is not a direct result of the project.*
- *No Changes – The presence of, or remediation activities related to, toxic materials could potentially impact the viability of a conservation easement. A specific question related to knowledge of previous land use will be added to the Grants Application Packet (GAP).*
- *No Changes made – concurs with staff recommendation on prioritization by project type.*

Brandon Pangman: Sierra County Planning Department

July 27, 2011

Attn: Jim Branham, Executive Officer, Sierra Nevada Conservancy

Dear Mr. Branham, or designee:

Please accept this comment from the Sierra County Planning Department in response to your e-mailed request for comments on SNC's "DRAFT Grant Guidelines for its 2011-12 Healthy Forest Grant Program funded by Proposition 84" received on July 20, 2011.

We are concerned about the confusing CEQA language found in Appendix E of the Draft Guidelines (which we recognize has been used in previous grant guidelines as well). Specifically: 1) the confusion over "Lead Agency" determination where no other state or local agency has permitting authority over a proposed Healthy Forest project; and 2) SNC's claim that, 'Under specific circumstances, SNC will act as a Lead Agency, if the project meets the definition of being categorically or statutorily exempt from CEQA. This opportunity may exist for project applicants that are not state or local agencies' (p.33).

Regarding the first issue, Sierra County has on a number of occasions been asked to file a CEQA Notice of Exemption on behalf of a (non-public agency) applicant for an SNC grant--and we were informed that they were told this was a requirement by SNC and/or a condition of the grant. But in each of those instances, Sierra County was not a permitting authority in any capacity whatsoever; Sierra County exercised no discretion and granted no entitlement--or even a ministerial permit. By definition (ref. CEQA Guidelines, CCR section 15367), "'Lead Agency' means the public agency which has the principal responsibility for carrying out or approving a project..." and a "Project" under CEQA (ref. PRC section 21065 and Guidelines CCR section 15378) is "an activity directly undertaken by any public agency...[or], (b)...by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies... [or], (c)...that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." While the Sierra Nevada Conservancy meets the definition of Lead Agency in issuing a grant of funds to carry out proposed Healthy Forest (or other) project--specifically under PRC 21065(b), above--insofar as the proposed project is conducted on federal (often USFS) lands and/or merely involves forest thinning and brush clean-up whether on public or private lands, and such activities are not regulated by local zoning or other regulations, Sierra County does not require a permit or grant of entitlement for such activities and therefore is not and legally should not be construed as the Lead Agency (or even a 'Responsible Agency') under CEQA. By executing and filing a Notice of Exemption (or Notice of Determination) on behalf of an SNC grant applicant for a project over which the County has no jurisdiction and no permitting authority, the County is essentially being asked to assume legal responsibility, and potentially liability, when it should not. In short, when a grant of entitlement or other discretionary review and approval is not necessary by a local agency for a proposed Grant project, and the project/activity is not being undertaken by a public agency itself, SNC retains 'Lead Agency' status under CEQA and should not communicate or

insinuate otherwise to its grant applicants. CEQA compliance remains the responsibility of the Lead Agency, not the applicant. SNC should file the Notices of Exemption/Determination (even if the costs for CEQA compliance and filing of notices are passed on to the applicant or project proponent).

Regarding the second (related) issue, Sierra County does not agree with the statement contained in Appendix E of the Grant Guidelines that 'SNC will act as a Lead Agency' only under specific circumstances, and further assuming the project is categorically or statutorily exempt from CEQA. If SNC is the Lead Agency by virtue of its support of a proposed project through a grant of financial assistance, it remains Lead Agency whether the project is exempt or not. SNC may certainly pass the cost and even the preparation of CEQA-compliant studies and filing of notices on to the applicant, but it remains SNC's responsibility to make the final determination under CEQA as Lead Agency---not to the county or city in whose jurisdiction or boundaries the proposed project may fall.

Sierra County agrees with the statements contained in the "Overview" section at the beginning of Appendix E to the Draft Grant Guidelines; but we are concerned about the confusing and sometimes misleading statements near the bottom of the same page (p. 33) which has led a number of applicants (and even SNC staff) to claim that Sierra County must act as Lead Agency and file CEQA Notices, when this should not be the case. Please amend the language contained in Appendix E to the Draft Grant Guidelines to better clarify to applicants that, when no other state or local agency has discretionary authority over a proposed project, SNC shall be the Lead Agency and CEQA Notices must be executed and filed with the Office of Planning and Research by SNC.

Thank you for your consideration of these comments.

Sincerely,

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bwp:0711, encl.

SNC response: Changes made – Language has been clarified to delineate the different responsibilities for addressing CEQA and NEPA requirements based on the type of

applicant and level of environmental review. The SNC is not requesting counties or local governments to assume liability for completing CEQA on behalf of any applicant unless required to comply with regulatory or permitting requirements.

Eric Huff: State Board of Forestry and Fire Protection

August 5, 2011

Dear Governing Board of the Sierra Nevada Conservancy:

Thank you for the opportunity to comment on the Conservancy's draft "Grant Guidelines" in support of "Healthy Forest" projects across the Sierra Nevada Range. I applaud the Governing Board's decision to award half of the remaining Proposition 84 Funds to such projects and appreciate the rigor of the draft Grant Guidelines to that end.

My sole comment relates to the apparent oversight of the importance of including reference in the draft Grant Guidelines to the requirement for compliance with the Professional Foresters Law, Public Resources Code Section 750, *et seq.* While the common misperception is that the Professional Foresters Law (PFL) only applies to projects involving a Timber Harvesting Plan or commercialization of wood products, the PFL is actually far broader in scope.

Public Resources Code (PRC) Section 753 defines "forestry" as:

...the science and practice of managing forested landscapes and the treatment of the forest cover in general, and includes, among other things, the application of scientific knowledge and forestry principles in the fields of fuels management and forest protection, timber growing and utilization, forest inventories, forest economics, forest valuation and finance, and the evaluation and mitigation of impacts from forestry activities on watershed and scenic values...

Forested Landscapes are defined in Public Resources Code §754 as,

...those tree dominated landscapes and their associated vegetation types on which there is growing a significant stand of tree species, or which are naturally capable of growing a significant stand of native trees in perpetuity, and is not otherwise devoted to non-forestry commercial, urban, or farming uses.

On page 6 of the draft Grant Guidelines, there are eight examples of "Category One grant projects" as follows:

Examples of potential Category One grant projects include, but are not limited to:

- 1. Vegetation treatments, prescribed fire or other fuel reduction activities to reduce the risk and harmful impacts of large, damaging fires.***
- 2. Forest management to increase forest resilience, and/or improve habitat conditions and biodiversity.***
- 3. Reforestation and implementation of suitable stand maintenance activities after wildfire, when appropriate.***
- 4. Forest treatments to address forest pest and invasive species.***
- 5. Vegetation treatments to increase carbon sequestration benefits, and foster adaptation resiliency of vegetation in light of predicted climate change.***
- 6. Conservation easements that protect forested lands from conversion to other uses and protect natural resources.***
- 7. Meadow restoration to improve habitat function and water retention.***
- 8. Sustainable utilization of biomass and a full range of forest products, including saw logs, resulting from activities associated with improving forest health.***

The plain text indicates that at least six of these examples clearly involve the professional practice of forestry as it is defined in statute. This would seem to suggest that that the involvement of a State licensed Registered Professional Forester (RPF) would be necessary to carry out such projects. However, there is no mention of compliance with the PFL or the importance of specifying RPF involvement in a grant application.

I note that the draft Grant Guidelines, Appendix E specifies the requirement for demonstrated compliance with the California Environmental Quality Act (CEQA). Appendix F similarly specifies the requirement for involvement of a licensed or certified Real Estate Appraiser. However, conspicuously absent is the requirement for compliance with the PFL. I therefore suggest that the draft Grant Guidelines be revised to include a requirement for demonstrated compliance with the PFL referenced in the body of the Grant Guidelines and included in an appendix consistent with Appendices E and F.

If I may assist staff at the Conservancy with specific language to address this oversight, please let me know. Thank you once again for the opportunity to comment.

Eric K. Huff, RPF No. 2544
Executive Officer, Foresters Licensing
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SNC response: Changes made- Reference to use of, and information related to, the legally required roles of Registered Professional Foresters has been added.

Carl Somers: The Trust for Public Land

August 15, 2011

Rushing to beat the bell here, but I know comments were due today on your draft Healthy Forests guidelines and we did want to go on record saying a couple of things:

1/ Bully for you guys for requiring pre-applications! We know this may create more work for your staff, but it sure does make life easier for grantors, given the time and resources that go into preparing a competitive complete grant application.

2/ Knowing what labor and materials cost these days, and knowing that scale is everything when it comes to fuel reduction projects and the like, we would advise going with a maximum \$350k grant threshold rather than the lower \$250k figure.

Hope this is helpful.

Cheers,
CS

Carl Somers
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The Trust for Public Land - conserving nature near you

SNC response: No changes made – consistent with staff recommendation.

Laurie Oberholtzer: Sierra County Land Trust

August 15, 2011

Sierra County Land Trust
PO Box 404
Sierra City, CA 96125

August 15, 2011

Sierra Nevada Conservancy
11521 Blocker Dr.
Auburn, CA 95603

Via e-mail

Re: Draft 2011-12 Grant Guidelines

To Whom It May Concern:

Please accept these comments on the Draft Grant Guidelines for Fiscal Year 2011-12 which are based on our experience over a number of proposition 50 and 84 grant cycles.

Environmental Review

(page 13, Item I.2)

We appreciate the recognition that many projects can qualify for a Statutory or Categorical CEQA exemption and that the lead agency can often be the State. We would appreciate it if you would make it clear in the guidelines that the Notice of Exemption need not have gone through the 30 day waiting period before the grant is submitted. This is not necessary, since it is rare that a challenge would result and, if so, it would result before the grant reaches final review.

Priority Weighting

(Page 18, items 1 and 2)

We would appreciate that additional weighting be given to conservation easements as they can have an extremely positive impact on forest health and are long term in nature. Weighting equal to site improvements should be considered.

Thank you for the opportunity to comment.

Sincerely,

Laurie Oberholtzer
Director

SNC response:

- *Changes made – Language has been clarified to delineate the different responsibilities for addressing CEQA and NEPA requirements based on the type*

of applicant and level of environmental review. The SNC is will act as lead agency when authorizing a grant to fund a project proposed by a non-profit organization. The public appeal time will begin when the SNC files CEQA documentation.

- *No changes made- weighting criteria based on SNC Board direction.*

Calli-Jane Burch: Butte County Fire Safe Council

August 15, 2011

Hello Sierra Nevada Conservancy,

Thank you for the opportunity to review and provide comment on the draft grant guidelines which are available at <http://www.sierranevada.ca.gov/sncgrants/>. I would like to complement SNC on the work that went into the draft. There are no portions which were unclear. Below are comments on elements of the guidelines I felt were particularly helpful:

1. The focus on forest health in the first round of funding will produce lasting projects in the Sierra Nevada.
2. The examples of projects (page 6) which Category One funding may be requested were very helpful. I was glad to see treatment of invasive species was included in the examples.
3. The pre-application process is a good approach to saving everyone time....grant applicants and reviewers.
4. The description of Consultation with local agencies was very good in clarifying the type of communication that goes into a project award (page 8).
5. Thank you for allowing the California Fire Safe Council reciprocity in place of a full pre application (page 9).
6. The section "J. Projects with Uncertain Treatment Area" is a new and interesting concept (page 14). Hopefully the flexibility will allow for better projects.

Thank you again,
Sincerely,
Calli-Jane Burch
Butte County Fire Safe Council

SNC response: No changes made