



USDA Forest Service Tribal Forest Protection Act (TFPA) Briefing Paper

Issue: Tribal Forest Protection Act Forest Service (FS) policy

Date: April 5, 2005

Background: The Tribal Forest Protection Act (Public Law 108-278) was passed in July 2004 in response to devastating wildfires that crossed from Federal onto Tribal lands the prior summer. The Act provides a tool for tribes to propose work and enter into contracts and agreements with the Forest Service (FS) or Bureau of Land Management (BLM) to reduce threats from on Federal lands adjacent to Indian trust land and Indian communities. The FS and BLM coordinated on development of policy to implement the Act.

Forest Service policy to implement the TPFA will be included with Stewardship Contracting guidance in Forest Service Handbook (FSH) 2409.19, Chapter 60 (currently an interim directive). The draft policy was sent to Regional Foresters for a formal tribal consultation and comment period from April 25 to June 25, 2005. Comments will be considered in finalizing the policy to be incorporated in the interim directive in the summer of 2005. Key points of the policy include:

- Tribal proposals must focus on FS lands that 1) border or are adjacent to tribal lands; 2) pose a fire, disease, or other threat to the Indian trust land or community or is in need of restoration; 3) not be subject to some other conflicting agreement or contract; AND 4) involve a feature or circumstance unique to the proposing tribe (such as legal, cultural, archaeological, historical, or biological).
- To qualify, the Indian land must: 1) border or be adjacent to FS administered lands; 2) be in trust or restricted status; 3) be forested or have grass, brush, or other vegetative cover; and 4) if burned over land, be capable of regenerating vegetative cover.
- To initiate a project, a tribal government submits a request to the Forest Supervisor or District Ranger, and recommendations are forwarded to the Regional Forester. Within 120 days of the submittal, the Regional Forester may issue a public notice of either a) initiation of any necessary environmental review, b) potential for entering into an agreement or contract with the tribe, or c) notice of denial to the tribe.
- A notice of denial may include specific factors in the denial, identify corrective courses of action, and propose consultation on how to protect the Indian trust land and tribal interests on the FS land.
- The FS may utilize an array of appropriate instruments to enter into contracts and agreements with tribes to further the TFPA and will emphasize the use of stewardship contracting.
- In considering entering into tribal agreements or contracts, the agencies may use a best value basis and give specific consideration to tribally-related factors, such as historical and cultural affiliation with the land, treaty rights, agency/tribal working relationships, landscape features, and others found in the Act.
- The FS is committed to implementation of the TPFA. The agency has instructed line officers to inform Tribal governments about the Act, the policy implementation schedule, and to continue using current authorities as appropriate to protect lands at risk from fire and other threats.

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