

APPENDIX E

**MOBILIZING FOR SUCCESS:
THE TRIBAL FOREST PROTECTION ACT OF 2004
TRAINING STRATEGIES AND RESOURCES**

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EXECUTIVE SUMMARY

Tribes and Agencies agree:

- The Tribal Forest Protection Act (TFPA) is a valuable tool designed to protect tribal lands and accomplish essential work on national forests; yet it is rarely utilized.
- Training on the importance of and how to use the TFPA is essential to optimize implementation of this act.
- Forest Service (FS) TFPA policies, particularly guidance regarding associated contracting, should be clarified to assist implementation by Forests and Tribes.

A number of staff from the FS, Tribes, and Bureau of Indian Affairs (BIA), recently responded to on-line surveys and participated in subsequent interviews and site visits regarding implementation of TFPA by the FS. (BLM was not included in the study or covered in this report). Most respondents expressed that they need and want TFPA training. Furthermore, a review of existing relevant FS directives and direction that would be used in such training revealed a number of serious, but easily correctable problems

This Training Report was commissioned by the ITC and includes:

- Four training modules with related PowerPoint presentations and handouts, including a proposal template and paper on contracting,
- Recommended policy revisions, and
- Communication and other strategies for improving the visibility and value of TFPA.

The training modules are designed with specific objectives. Each module provides specific goals and a different level of information about TFPA, commensurate with participant roles and responsibilities. All modules emphasize consultation and collaboration between Tribes and the FS. The modules are suitable for adaptation and integration into existing training opportunities, including on-line courses.

Training is not enough however. Renewed visibility and commitment are needed. As the 10th anniversary of the TFPA approaches in 2014, it is time to launch a campaign to promote more numerous and more extensive scaled TFPA projects on national forests, linking to other projects across landscapes. Such a campaign would expand the potential contributions TFPA could make in restoring and protecting trust resources and meeting the FS's mission and priorities for forest health across all lands.

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Leadership and learning are indispensable to each other.

John F Kennedy 1963



Introduction and Background

The Tribal Forest Protection Act, PL 108-278 of 2004, (TFPA) authorizes the Forest Service (FS) to give special consideration to tribal proposals for projects on lands administered by the FS bordering or adjacent to tribal trust lands (please see the companion Success Story Report for a more detailed discussion of the history of the act and related projects). Under this unique legislation, project proposals are intended to reduce the risk of adverse effects to tribal lands and to restore FS lands. Risk vectors include, but are not limited to, catastrophic fire, insects, disease, invasive species, and other factors.

These types of threats and risks abound along the approximately 2,600 miles of shared boundary between reservations and the FS. Many national forests are characterized by excessive fuel accumulations and growing threats of insects, disease, invasive species, and wildfires. Major catastrophic fires have jumped FS boundaries and devastated reservations within the hundreds of thousands of acres of shared watersheds, particularly in the West and Southwest. It was because of these disasters that TFPA was passed.

It was originally anticipated that dozens of TFPA projects would have been developed given the persistent threats of forest fires, disease and other health issues. However, in the eight years since TFPA was passed, there are only six documented TFPA projects totaling approximately 10,000 acres out of the 193 million acres administered by the FS. While we do not know how many tribal trust lands are at risk nation-wide, changes are needed if TFPA is to be an effective vehicle to more comprehensively reduce threats and restore ecosystem health across the landscape.

Why aren't there more projects? This question and others are being asked in a recent study undertaken by the Intertribal Timber Council (ITC), in collaboration with the FS and Bureau of Indian Affairs (BIA). The study includes a series of on-line surveys, telephone interviews and site visits. The goals of the study are to:

- Identify barriers to successful implementation and recommendations for addressing them.

- Develop recommendations to promote on-the-ground, nation-wide implementation of the TFPA.
- Design TFPA training, emphasizing its merits and mechanisms for implementation.
- Develop comprehensive communications that provides consistent messaging and communication among partners.

One hundred and eighty respondents from Tribes, BIA, and the FS took a computerized survey and over 50 people were interviewed in more depth. Frequently, participants identified the need for instruction, guidance, and technical support.

From the portions of the study so far completed, there are principally two reasons for the lack of more TFPA projects. First of all, the TFPA is not well understood. In a related review of past and existing TFPA training, it appears that such training has generally been limited to only a couple of FS regions and a few forums of limited duration (see Appendix B). The FS has not conducted any nationwide tribal relations training in general or any specific national TFPA training. Furthermore, the act has not been promoted or incentivized compared to other legislation like the Healthy Forest Restoration Act or the Collaborative Forest Landscape Restoration Act.

Secondly, even where TFPA is known, Forests and Tribes are unsure how to operationalize it. There are numerous questions about appropriate mechanisms (e.g., contracts vs. agreements, full and open competition or sole source). Guidance found in the FS Manual at FSH 2409.19 and a related letter is more restrictive and burdensome than the TFPA itself. (See Attachment D for the excerpted documents and recommended changes).

In order to remove these barriers, there needs to be a leadership-driven initiative to promote TFPA training, communicate the value of TFPA, and provide clear direction and assistance to the field. These actions will enable the agency to redeem its trust responsibilities to protect tribal trust lands from threats emanating from national forests. Tribes and Forests will be able to benefit from this legislative tool to improve forest health across landscapes and contribute to the Department of Agriculture and FS emphasis on “all hands and all lands.”

The next section of this report outlines the training modules. Related resource materials are in Attachment D, which includes PowerPoint presentations, a TFPA proposal template, and a handout on considering “best value” and sole-source authority in contracting to implement TFPA. The final section provides recommended systemic and focused actions to support implementation of TFPA.



Training Modules

The four related training modules are designed so that participants are presented with different levels of TFPA instruction, commensurate with their roles, experience, and responsibilities. The objectives of each training module are tailored to specific audiences and objectives. All the modules share several emphases:

- Tribal and FS participation is essential in adapting and delivering all the modules and should be undertaken by a training cadre with the local host. The PowerPoint instructor notes identify opportunities for bringing in tribal perspectives and local contexts (e.g., local protocol agreements).
- Consultation and collaboration are essential for successful TFPA proposal development and project implementation (consistent with the Administration's emphasis).

The first two modules are proposed as TFPA short sessions to orient or acquaint participants with TFPA. They are adaptable to be integrated into more comprehensive training sessions and meetings, such as the ITC symposia, joint tribal-federal workshops, regularly scheduled forest and regional leadership team meetings or recurring regional and interregional tribal relations training.

There currently are not any national FS Tribal Relations Training sessions, except for an interagency on-line course. A national FS tribal relations training program is highly recommended to provide a good grounding in government-to-government relations, trust responsibilities and current federal policies and to support more focused training on TFPA. In the interim, Forest, Regional and Interregional Training could incorporate TFPA training materials more consistently nation-wide. These modules should be adapted for delivery by webinar, videoconference, online, and, in person training.

The third module is designed in a workshop format for Tribes and Forests to collectively gain familiarity with TFPA, identify potential projects and develop proposals. The fourth module focuses on operational mechanisms available to FS, Tribes, intertribal, and BIA contracting, agreements and grants specialists. This module can be adapted as an immediate follow-up to the third module. In all cases, the modules can be modified.

The following matrix summarizes the sessions and intended participants:

Module 1 Basic Tribal-Federal Relations	Agency and Tribal Leaders and Staff
Module 2 Leadership in Tribal-Federal Relations	Agency and Tribal Leaders and Key Staff
Module 3 TFPA Proposal Development Workshop	Agency and Tribal Leaders and Key Staff
Module 4 TFPA Implementation	Contracting, Grants, Agreements and Partnership Specialists, Tribal Relations Program Managers, Tribal Intergovernmental Staff, Tribal Administrative Staff



Module #1: Basic Forest or Regional Tribal –Federal Agency Relations Training

Description

In this introductory course, line officers and key staff will develop an understanding and awareness of the unique status of tribal governments, the concepts of government-to-government relationships and the trust responsibility. While only direct experience and personal engagement between tribal and federal officials over time can effectively create good working relationships, it is critical for line officers and key staff to acquire a basic foundation that they can build upon when working with Tribes who have diverse cultures, governmental structures, decision-making processes and other unique attributes.

Key principles include a basic political, cultural and governmental overview of Indian Country. When delivered as part of an intertribal/interagency training, examples of working with specific Tribes and federal agencies could be introduced.

TFPA should be highlighted as a critical legislative tool for the FS to redeem trust responsibilities, and for Tribes and National Forests to reduce threats to tribal lands and collaborate on landscape scaled projects.

Objectives

- Develop a basic knowledge and skills to work with tribal governments and the agency.
- Become acquainted with TFPA.

Participants

All employees who may work with Tribes or programs that have tribal implications (e.g., contracting officers, grants and agreement specialists). Tribes and intertribal organizations should be invited to participate in the design and delivery of the training. They may want to have FS and other relevant federal policies, organizational procedures and decision-making processes included in the training module.

Materials

Handout in Attachment A (TFPA and Tip Sheet) and Attachment D (Module 1 PowerPoint Presentation).



Module #2: Leadership Tribal Relations Training

Description

The course is designed to develop leadership skills and expertise in working relationships between Tribes and the FS. TFPA would be introduced as a critical legislative tool. Examples would be provided of successful TFPA application using a variety of strategies to address issues and opportunities to restore forest health across borders. Success Stories would communicate the mutual benefits of TFPA implementation. This training will also encourage participants to share perspectives on collaboration to restore and sustain forest resiliency across boundaries.

Objectives

- Strengthen leadership skills in working with Tribes and federal agencies.
- Develop cross-cultural communications skills.
- Increase understanding of American Indian law, FS regulations and policy relevant to land and resource management, including TFPA and Tribes' policies and standards regarding resource management.

Participants

Tribal leaders, FS Line Officers and key tribal and agency staff who have responsibilities for working with tribal governments.

Materials

Attachment A (TFPA and Tip Sheet Handouts, Success Story Profiles). (See companion Success Study Report). Attachment D (PowerPoint Presentation for Module 2).



Module #3, Executive Workshop on TFPA Proposal Development

Description

This course outlines what FS Line Officers and Tribal Leaders need to know about the TFPA and how to implement the act. This 1-day course will provide FS and Tribal leaders with the skills and knowledge share perspectives, agree on priority issues and opportunities affecting forest health issues on a landscape basis, and to work together on TFPA proposals. The agenda is best for face-to-face interactions in a workshop setting, but could be adapted for video-conferencing where there is an existing good working relationship. The agenda is flexible and can be adapted to focus on TFPA training with follow-up sessions to identify potential projects and develop appropriate proposals.

Objectives

- Become familiar with TFPA and its application.
- Collaboratively identify potential project areas.
- Develop potential TFPA proposals.

Participants

Tribal leaders and Line officers, and their key administrative staff interested in the development of a TFPA proposal.

Prerequisites

A Regional or Interregional Tribal Relations Course is recommended.

Materials

Attachment A (TFPA Handouts including Project Template) and Attachment D (PowerPoint Presentation for Module 3).

Pework

Experience has demonstrated the benefit of the Tribe and the FS to have individual strategy sessions with some TFPA orientation. These sessions can also include preliminary identification of key areas (e.g., on maps at a mutually agreed to scale) and compliance with the National Environmental Policy Act (NEPA) so that the Tribe and FS can be prepared for the collaborative workshop:

For the Tribe: Identify potential risks and high priority areas for the Tribe.

For the Forest: High priority areas for the FS where NEPA has been completed and where NEPA is planned.

The Workshop Template Agenda (modeled after the White Mountain Apache Tribe and the Apache-Sitgreaves NF Workshop in Attachment B) follows:

DRAFT TFPA WORKSHOP AGENDA TEMPLATE

- 8:00 AM Welcome & Introductions - Host
- 8:10 AM Objectives - Facilitator
- 8:20 AM The Tribal Forest Protection Act - TFPA Trainer
- Overview – Senator Feinstein Video and TFPA PowerPoint.
 - TFPA Proposal Development
 - Implementing TFPA-Contracts/Grants/Agreements
- 9:30 AM Instructions to Breakout Groups:
- Identify and discuss opportunities (using prework on appropriately scaled maps) facilitated by Training Cadre Member including:
- Potential risks and high priority areas for the Tribe;
 - High priority areas for the FS (where NEPA has been complied with and where NEPA is planned);
 - Overlap: mutual priority areas and projects.
- 10:30 AM Break
- 10:45 AM Breakout Groups (continued)

Discuss potential projects to address mutual priorities using TFPA template.

12 Noon Group Lunch

1:00 PM Break-out Groups Report: Summarize findings of overlaps and priorities, focusing on potential projects that:

- Reduce risk,
- Restore landscape resiliency and resources values and
- Are a priority for the Forest and Tribe

2:00 PM Discuss next steps for proposal development and implementation, including field verification and NEPA compliance.

3:00 PM Break

3:15 PM Identify next steps and assign responsibilities for follow-up

4:00 PM Close for the Day

Travel Home Safely!

Module #4, Contracts, Agreements, and Grants (CA&G)

Description

FS and Tribes CA&G specialists will become acquainted with TFPA and knowledgeable about regulations and appropriate choices for operationalizing TFPA projects.

Objectives

Participants become knowledgeable about working with agency and tribal governments and relevant laws, including TFPA. Additionally, they will become acquainted with the attributes of successful TFPA projects and the lessons learned, focusing on the merits and constraints of various instrument choices (e.g., contract vs. grant). Participants in this training session will be able to work on a government-to-government basis when deciding how to best implement a TFPA proposal to address local issues and opportunities.

Contracting officers are required to undertake at least 24 hours of training related to stewardship contracting prior to being designated as a contracting officer on a stewardship contracting project. TFPA training should be incorporated into this and other stewardship contracting. TFPA training should also be coordinated with the Contracting Officers' warrant system training and CA&G specialist certification programs as well.

Participants

FS Contract and Acquisition Directors and related staff, FS Tribal Relations Program Managers, Tribal administrators, and staff.

Materials

Attachment A (TFPA Handouts including the Key Concepts for Implementing TFPA in Contracts Handout) and Attachment D (PowerPoint Presentation for Module 4).



Conclusions and Recommendations

Training is vitally needed to support implementation of TFPA. As mentioned earlier, participants in the TFPA study frequently pointed to the need for instruction. Training is not enough however.

Renewed visibility and commitment is needed. As the 10th Anniversary of the TFPA approaches in 2014, it is time to launch a campaign to promote more numerous and more effective TFPA projects on national forests. National FS leadership engagement and support in such a campaign is needed to strengthen the contributions TFPA could make in meeting the agency's mission and priorities for forest health across landscapes. The following section provides systemic and specific actions. The companion "Success Story" Report discusses needed budget direction in more detail.

1. Rethink how TFPA training, direction and guidance is housed and delivered.

TFPA direction has been embedded and subsumed in FS stewardship contracting policy, including staff, manual direction and training sessions. Yet TFPA transcends FS organizational categories, e.g., timber, vegetative management, state and private forestry, contracting, partnership and other conventional agency programs.

- ✓ Develop a FS, ITC, and BIA implementation strategy within one month of the completion of the TFPA Analysis Report that would cross-cut agency programs.
- ✓ Revise FS directives and guidance (See Attachment D for recommendations).
- ✓ Incorporate TFPA direction into the Office of Tribal Relations direction at Forest Service Manual (FSM) 1563 with appropriate cross-references in other sections of the manual, including, but not limited to, stewardship contracting.

2. Mobilize tools, resources, talent and experience.

This report provides four training modules. However, there needs to be a system for delivering them. There are a number of FS line officers, Tribal leaders, and key staff who have personal knowledge of TFPA and can be for champions for implementation. They could also serve as instructors and speakers at TFPA workshops. Experienced ITC and BIA personnel could also contribute to training and technical support for TFPA.

- ✓ Develop a cadre of TFPA instructors (Tribes, FS and BIA members) who can mobilize quickly, work collaboratively and deliver training on TFPA.
- ✓ Deliver training at all levels of the FS, across programs with Tribes and other partners, looking for strategic opportunities in key places.
- ✓ Develop a TFPA support team consisting of an experienced and knowledgeable people (including contracting officers) who can assist Tribes and National Forests successfully develop proposals and implement TFPA projects.

3. Create and communicate a climate for accomplishment.

Agency personnel and Tribes raised serious concerns about their months of uncertainty about the appropriate instruments to use and the lack of clear direction and assistance and problems with TFPA implementation. Yet some of them persevered and were ultimately successful.

- ✓ Provide incentives through budget direction that would prioritize TFPA and link with “all hands, all lands” approach, the Collaborative Forest Landscape Restoration Program (CFLRP) and other landscape scale efforts.
- ✓ Expand the opportunity horizon using the new planning rule for the new generation of forest land management plans on 193 million acres. Tribes could identify priority areas for threat reduction and restoration, which would provide a foundation for future TFPA projects.
- ✓ Recognize and communicate the work of TFPA project partners, highlighting the difference they are making for their forests and communities.

(See the draft TFPA Communications Plan in Appendix B).

ATTACHMENT A

HANDOUTS

TFPA LEGISLATIVE TEXT

PUBLIC LAW 108–278—JULY 22, 2004
TRIBAL FOREST PROTECTION ACT OF 2004

118 STAT. 868 PUBLIC LAW 108–278—JULY 22, 2004
Public Law 108–278
108th Congress

An Act

To authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Tribal Forest Protection Act of 2004”.

SEC. 2. TRIBAL FOREST ASSETS PROTECTION.

(a) DEFINITIONS.—In this section:

(1) FEDERAL LAND.—The term “Federal land” means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) INDIAN FOREST LAND OR RANGE LAND.—The term “Indian forest land or rangeland” means land that—

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

(B)(i)(I) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103)); or

(II) has a cover of grasses, brush, or any similar vegetation; or

(ii) formerly had a forest cover or vegetative cover that is capable of restoration.

(3) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) SECRETARY.—The term “Secretary” means—

(A) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

(B) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

(b) AUTHORITY TO PROTECT INDIAN FOREST LAND OR RANGE-
LAND.—

(1) IN GENERAL.—Not later than 120 days after the date on which an Indian tribe

submits to the Secretary a request to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland) that meets the criteria described in subsection (c), the Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe pursuant to section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)), or such other authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3).

(2) ENVIRONMENTAL ANALYSIS.—Following completion of any necessary environmental analysis, the Secretary may enter into an agreement or contract with the Indian tribe as described in paragraph (1).

(3) ACTIVITIES.—Under an agreement or contract entered into under paragraph (2), the Indian tribe may carry out activities to achieve land management goals for Federal land that is—

- (A) under the jurisdiction of the Secretary; and
- (B) bordering or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe.

(c) SELECTION CRITERIA.—The criteria referred to in subsection (b), with respect to an Indian tribe, are whether—

- (1) the Indian forest land or rangeland under the jurisdiction of the Indian tribe borders on or is adjacent to land under the jurisdiction of the Forest Service or the Bureau of Land Management;
- (2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe—
 - (A) poses a fire, disease, or other threat to—
 - (i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or
 - (ii) a tribal community; or
 - (B) is in need of land restoration activities;
- (3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

(4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

(d) NOTICE OF DENIAL.—If the Secretary denies a tribal request under subsection (b)(1), the Secretary may issue a notice of denial to the Indian tribe, which—

- (1) identifies the specific factors that caused, and explains the reasons that support, the denial;
- (2) identifies potential courses of action for overcoming specific issues that led to the denial; and
- (3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

(e) PROPOSAL EVALUATION AND DETERMINATION FACTORS.—In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the

- (1) use a best-value basis; and
- (2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—
 - (A) the status of the Indian tribe as an Indian tribe;
 - (B) the trust status of the Indian forest land or rangeland of the Indian tribe;
 - (C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;
 - (D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;
 - (E) the indigenous knowledge and skills of members of the Indian tribe;
 - (F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;
 - (G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and
 - (H) the access by members of the Indian tribe to the land subject to the proposal.

(f) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this Act—

- (1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of

the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this Act; or
(2) invalidates any agreement or contract under that authority.

(g) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the Indian tribal requests received and agreements or contracts that have been entered into under this Act.

Approved July 22, 2004.

TRIBAL FOREST PROTECTION ACT TIP SHEET

The Tribal Forest Protection Act (TFPA) authorizes the Secretaries of Agriculture and Interior to give special consideration to tribal proposed projects meeting certain criteria on Forest Service (FS) or Bureau of Land Management (BLM) managed lands to protect the Indian trust lands and resources from threats such as fire, insects and disease:

- The Indian land (either tribal or allotted) must be in trust or restricted status and must be forested or have a grass, brush, or other vegetative cover.
- Burned-over land capable of regenerating vegetative cover also qualifies.
- The Tribe must propose its project to take place on agency managed land which:
 - borders or is adjacent to Indian trust land and:
 - poses a fire, disease, or other threat to the I trust land or community, or
 - is in need of restoration.
 - is not subject to some other conflicting agreement or contract, and
 - does involves a feature or circumstance unique to the proposing Tribe (i.e., legal, cultural, archaeological, historic, or biological).
- Tribal projects can be under Stewardship Contracting or “such other authority as appropriate.” This can include other types of contracting and agreements.
- Collaboration is encouraged to identify priority areas and projects.
- Within 120 days of a Tribe submitting a formal request the Secretary may issue a public notice of either initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Tribe.
- The agencies may:
 - use a best value basis (e.g., special consideration for local jobs and business), and
 - give specific consideration to tribal factors.

If the FS or BLM deny a tribal request may issue a notice of denial that identifies specific factors in, and reasons for the denial, identifies corrective courses of action, and proposes consultation with the Tribe on how to protect the Indian trust land and tribal interest on the FS or BLM land.



Handout for Module 3
Tribal Forest Protection Act
Proposal Template

The following template is designed to assist Tribes and Forests in developing a Tribal Forest Protection Act proposal. The template is organized to highlight required categories of information; the specifics provided can be adapted, deleted or expanded as appropriate. The actual proposal does not have to be presented in this format as long as all the relevant information is incorporated. It is critical to specify that this proposal is endorsed and transmitted by the tribal government and is accompanied by the appropriate signature.

Date: Add the date.

Purpose: The _____ Indian Tribe (Tribe) is submitting a proposal to the _____ National Forest to enter into an agreement and/or contract with the Tribe under the Tribal Forest Protection Act of 2004 and other authorities, as appropriate. The Tribe understands that the proposal outlined below is subject to the review of the _____ Regional Forester within 120 days of the submission of this proposal.

Indian Tribe: The _____ Indian Tribe is a federally recognized Tribe, per _____. The Tribe is governed by a constitution and bylaws that authorize the governing body to enter into agreements and contracts with federal agencies on behalf of the Tribe.

Indian Forest Land: The Tribe wants to protect _____ acres and/or _____ miles of tribal forestlands that are within the _____ Indian Reservation that adjoins the _____ National Forest. These tribal lands are in trust status.

Project Location: The Tribe is proposing a project on lands administered by the _____ National Forest in _____ County. These lands are located in _____ and are adjacent to/or near the _____ portion of the reservation. The project area encompasses portions of Townships _____. The attached location map displays the project area and the tribal trust lands to be protected.

Threat to Tribal Lands or Need for Restoration: (The example presented focuses on fuels, the threat of wildfire, and forest disease. Modify and adapt as relevant):

High accumulations of vegetative fuels exist throughout the area, posing a significant wildfire threat to the adjoining tribal trust lands and tribal community. The ___ Region of the Forest Service has identified the area as having a “very high” Fire Hazard and Risk Index and the _____ tribal community is considered a “Community at Risk”. The presence of _____ forest insects and/or _____ forest diseases combined with excessive surface fuels, overstocking of _____ trees, poses a forest health threat to tribal trust lands.

Other Factors: The area includes features unique to the _____ Tribe, including trust resources, treaty rights, and/or culturally important areas and resources. (Note: Sensitive information about the exact location of culturally important areas or resources does not have to be revealed in the proposal itself).

Project Objectives and Risk Reduction (Adapt as appropriate): As proposed, approximately _____ acres of land administered by the _____ National Forest will be treated through a series of fuels reduction and forest restoration projects strategically placed across the project area. Vegetation will be treated by a combination of manual, mechanical and prescribed burning methods to reduce fuel loads and tree densities. Please see attached map. These treatments will be implemented over a _____ year period. There are no known existing contracts or agreements that could conflict with this proposal.

The project is designed to reduce the risk to nearly _____ acres of tribal trust lands. The project will also benefit the _____ National Forest, several private ownerships and _____ state and local government lands. The project will compliment Tribal projects located _____.

Environmental Compliance: The Tribe understands that before the project will be implemented, the USFS will comply with the National Environmental Policy Act and other relevant laws.

Tribal Contacts: Add Names, emails, phone numbers and addresses for:

Chairperson

Administrator

Project Manager

Attachments: Map(s) illustrating:

1. Tribal trust lands at risk

2. Project location on national forest lands that are threatened or in need of restoration.



MODULE 4

Handout

Implementing the Tribal Forest Protection Act Through Forest Service Contracts

Key Concepts and Policies

The Tribal Forest Protection Act (TFPA) can be implemented through contracts, grants or agreements, including Forest Service (FS) stewardship contracts. This paper provides a quick overview of key concepts and policies regarding contracting that have been identified during interviews as needing clarification. The use of TFPA and sole-source contracting is specifically addressed.

Contracting

Basically, the FS has two distinct types of contracts: Timber Sales (designed to sell “government property”, e.g., logs) and Service Contracts (designed to purchase goods and services, e.g., thinning). Recently, new stewardship contracting authorities and instruments have been developed to combine the acquisition of services and goods with the sale of timber.

Stewardship Contracts

These contracts may include provisions for the exchange of goods for services, the local retention of receipts, multi-year contracting, and designation by description or prescription. There are five contract types approved for use in stewardship contracting projects:

1. Integrated resource timber contract-scaled,
2. Integrated resource timber contract-tree measurement,
3. Integrated resource service contract scaled
4. Integrated resource service contract-tree measurement, and
5. Service contract.

The TFPA includes reference to stewardship contracts and agreements as an option:

“...the potential of entering into an agreement or contract with the Indian tribe pursuant to section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277 (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 117 Stat. 275), or such other authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3).”

“...Nothing in this Act—

(1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this Act”.

Consideration of best value contracting is required for stewardship contracting and germane to TFPA contract awards.

Best Value

A general meaning of “best value” is that one is getting unequalled merit or worth from a single source or the best of several competing offers. In the context of federal contracting, it is a “tradeoff process”, in which

“... it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror” Federal Acquisition Regulation (FAR) 15.101-1(a).

“ ‘Best value’ also means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement”.

FAR Part 2.1, also see in FS Stewardship Contracting Training Program at:

<http://www.fs.fed.us/forestmanagement/stewardship/training/index.shtml>).

Forest Service Handbook (FSH) 60.5 further notes:

“It is the process of selecting a contractor based on price and non-price criteria. Evaluation factors may include, but are not limited to, past performance, work quality, experience, and benefits to the local community.”

The criteria and decision-making methodology should transparent and well documented consistent with the requirements of FAR.

FSH 63.1 adds:

*“In awarding a stewardship contract on a best value basis, the Forest Supervisor or other authorized line officer **shall consider criteria other than cost or price** (emphasis added). These non-price criteria include, but are not limited to, the contractor’s past performance, work quality, existing public or private agreements or contracts, on-time delivery, experience, and technical approach. The Forest Supervisor or authorized officer may consider the benefits to the local and rural community when awarding a stewardship contract on a best value basis. The Forest Supervisor may use non-traditional contractors or recipients, such as counties, private persons, or other private entities.”*

Use of Other Contracting Tools to Implement TFPA Projects

While best value is mandatory in Stewardship Contracting, it is discretionary for TFPA projects that do not involve stewardship contracts. The TFPA states that the Secretary **may** (emphasis added) use a best value basis for award and give specific consideration to tribally related factors in responding to a tribal proposal, including, but not limited to:

- (A) the status of the Indian tribe as an Indian tribe;*
- (B) the trust status of the Indian forest land or rangeland of the Indian tribe;*
- (C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;*
- (D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;*
- (E) the indigenous knowledge and skills of members of the Indian tribe;*
- (F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;*
- (G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and*
- (H) the access by members of the Indian tribe to the land subject to the proposal.*

These factors also contribute to a Tribe’s eligibility for a sole source contract (stewardship or other type of contract).

“Less Than Full and Open Competition”, specifically Sole Source Contracts

This form of contracting is noncompetitive and focused on acquiring the services or products that are essential and can only be obtained from a single entity.

The FAR referenced in the above Handbook provides 5 criteria for sole source awards:

1. *When the supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements, or*
2. *When there is a reasonable basis to conclude that the agency’s minimum needs can only be satisfied by one source, or*
3. *Unique supplies or services are available from only one source or only one supplier with unique capabilities, or*
4. *Sole source awards under the 8(a) Program [15 U.S.C. 637](#) (see [Subpart 19.8](#)), or*
5. *Sole source awards under the HUB Zone Act of 1997—[15 U.S.C. 657a](#) (see [19.1306](#)).*

The FS guidance for TFPA acknowledges the option for sole source. According to the Forest Service Renewable Resources Handbook, Chapter 60, Stewardship Contracting (FSH 2409.10):

*“[P]roposals submitted under the Tribal Forest Protection Act, **may be eligible for consideration under applicable sole source contracting authorities** (emphasis added). Follow the procedural direction for the application, development, execution and administration of contracts and agreements in FSH 1509.11 and FSH 6309.32.”*

While the TFPA does not explicitly direct the FS to use sole source authority, it is implied given that under TFPA, a Tribe initiates a proposal to protect their rights and interests regarding trust lands, which Tribes are uniquely positioned and qualified to undertake.

In the context of FS contracting, a sole source selection for TFPA could be made (and has been made in a number of successful TFPA projects) when the criteria are met, as indicated above. The TFPA references tribal-related factors, many of which are unique and highlight information that could be used to support the choice of a sole source contract (for example, indigenous knowledge). The FAR requirements, the FSH and TFPA

are complimentary.

TFPA can be, and has been used, as a sole source authority. The FS may cite TFPA and FAR 6.302-5 (referring to authorized or required by statute) as the justification for the sole-source award decision.

For more information see the following web based resources:

<http://www.fs.fed.us/business/static/Acquisition%20Basics-Contracting%20with%20FS%20brochure.pdf>

<http://www.fs.fed.us/forestmanagement/stewardship/index.shtml>

Training, including best value is located at:

<http://www.fs.fed.us/forestmanagement/stewardship/training/index.shtml>

And in the Federal Acquisition Regulations at:

<http://farsite.hill.af.mil/vffar1.htm>

SUCCESS STORY HANDOUTS



SUCCESS STORY PROFILE: MCGINNIS CABIN

This Tribal Forest Protection Act (TFPA) project, initially intended as a fuels reduction project, ultimately included precommercial thinning and commercial thinning of second growth Ponderosa Pine plantation areas, road construction and road maintenance. The work is contracted to the Confederated Salish and Kootenai Tribes (Tribes) on the Lolo National Forest (Forest) located in west central Montana.

This TFPA project provides the Forest with an opportunity to collaborate with the Tribe. There were a number of issues that had to be addressed before work on the ground could commence.

This type of contract was new to the Forest and as a consequence, preparation took time. There were three parties: the Tribe, the Forest Timber Staff and the Forest Service Acquisition Staff that had to work together for the first time in different roles necessitated by implementing the TFPA through a procurement contract.

Another issue was more specific to TFPA. "One of the biggest challenges we faced initially was the question of whether the TFPA authorizes 'less than full and open competition' with a Tribe. As an Acquisition Contracting Officer, I think this is a very important point." (Loren Ebner, Contracting Officer, U.S. Forest Service, Western Montana Acquisition Zone) The Forest and Tribe worked through these issues, the procurement contract was awarded without competition and approximately 30% of the work has been completed (650 acres are left) with great success. Then the market conditions changed.

Market fluctuations and finally the closure of Stone Container Mill resulted in both the Tribe and the Forest agreeing to suspend the contract until there is an identifiable outlet for the products (pulp and non saw logs).

There were other lessons learned. "With the uncertainty of the market, an agreement may have been more flexible. We didn't account enough for potential risk." (Jim Durglo, Department Head, Forestry Department, Confederated Salish and Kootenai Tribes)

Both the Tribe and the Forest indicated that despite the problems the project was a success. "This is a great project. We really want to get the land treated and we hope to have future projects." (Wanda Smith, Supervisory Forester for the West Zone of the Lolo NF)

Photo Courtesy of Jim Durglo, CSK



SUCCESS STORY PROFILE: MILL CREEK ROADSIDE FUELS REDUCTION PROJECT

In Northwest California, the Megram Fire devastated 125,000 acres of the Six Rivers and Shasta-Trinity National Forests in 1999 where a major blow down three years earlier contributed to high fuels. The smoke alone forced the evacuation of the most vulnerable tribal members. Afterwards, the Hoopa Tribe (Tribe) pursued ways to prevent the recurrence of this kind of fire.

In 2005, the Tribe proposed a Tribal Forest Protection Act (TFPA) stewardship project on the Six Rivers National Forest (Forest) that was accepted the same year. The project was designed to treat approximately 2000 acres in four phases:

- Phase 1-treatment of 27 miles/627 acres of roadside fuels.
- Phases 2 and 3- stand improvements.
- Phase 4-shaded fuel breaks and fire line maintenance.

Portions of the proposal were incorporated as an Operating Plan for an existing Participating Agreement in 2007. The Forest funded 177 acres in 2008 and another 155 acres in 2009. Only 15% percent of Phase 1, as originally defined, has been done, but the FS considers it completed, based on recent conditions. Factors include:

- Newly designated addition to a wilderness, adjacent to the area, made work more difficult due to the uncertainty.
- Little understood provisions in the master agreement ultimately affected the project and resulted in the higher costs.
- The environmental compliance documents, which were not communicated at the outset, did not allow for certain types of equipment, which resulted in higher labor costs.
- Fuel levels and travel time were underestimated resulting in higher costs.

Lessons learned include:

- Take into account provisions in related documents.
- Estimates need to be more realistic than conceptual.
- Agree on costs for reimbursements ahead of time.

Despite the issues, both the Tribe and the Forest Service emphasized the value of the TFPA project. “We understand our trust responsibilities. This is the kind of project that also furthers our relationship and our future work together.” (Tyrone Kelley, Forest Supervisor, Six Rivers NF) “Overall the project was a success. The Tribe got a traditional trail protected and a fuel break.” (Darin Jarnaghan, Sr., Forest Manager, Hoopa Tribe)

Photo Courtesy of Six Rivers National Forest



SUCCESS STORY PROFILE: THE SIXTEEN SPRINGS STEWARDSHIP PROJECT

The Mescalero Apache Tribe (Tribe) and the Lincoln National Forest (Forest) have entered into the Sixteen Springs Stewardship Project that has expanded to protect the lands and forest health in Otero and Lincoln Counties in New Mexico. This forest health improvement project also reduces the risk of fuels and fire risk to the Mescalero Apache Reservation, the Village of Ruidoso, the 16 Springs community, and the Forest.

The Forest and the Reservation share 30 miles of boundary on the southern end, 6 miles of boundary on the Southwest and 15 miles on the northern end. This collaborative project between neighbors has furthered the relationship between the Forest and Tribe. The Tribe had gotten involved in the forest planning and submitted their proposal at a strategic time in the Forest's NEPA work.

The majority of this work is being completed through a Stewardship Contract. To date, 6056 acres and 3.4 miles of road have been undertaken through 22 separate task orders, totaling \$6,271,662. Commercial timber removal is producing material for the local small sawmill. In addition to the benefit to forest-dependent industries, the project is intended to create (approximately 30) and maintain jobs within the local tribal and county communities, especially for those with specialized skills.

The Tribe and Forest have worked to cultivate a good relationship that was problematic for a long time, but has steadily improved. The Tribe developed credibility and trust for doing good work and the Forest had become more supportive. However, the Tribe is faced with having to work with and educate new staff due to frequent national forest leadership and staff changes.

The Tribe has a large organization and tries to maintain year round work. The Tribe is supporting crews recognized as having diverse skills and being "redcarded" so they can undertake forest work and fight fires. The Tribe is accomplishing quality management work on both sides of the boundary. Tribal fuels projects are coordinated with the Forest.

The Forest and Tribe continue to expand the contract work and were able to take advantage of economic stimulus funding for several years. However, that funding is no longer available and future funding is uncertain. The Forest is facing budget reductions so the Forest Supervisor is working with the Tribe on priorities and seeking additional funds through competitive programs such as the Collaborative Forest Restoration Program. The Tribe is also trying to diversify the funding (e.g. fire funding) and work (e.g., fuels projects on and off the reservation).

"The idea is to be persistent. Don't take no for an answer." (Thora Padilla, Director, Department of Resource Management and Protection, Mescalero Apache Tribe) "I recognize the value this landscape has to native communities and want to continue to support the Tribe's stewardship on these lands." (Robert Trujillo, Forest Supervisor, Lincoln National Forest)

Photo Courtesy of Lincoln National Forest, Mickey Mauter, Photographer



SUCCESS STORY PROFILE: QUINAULT LAKE WATER TREATMENT PLANT PROJECT

Located on the southwestern corner of the Olympic Peninsula in the State of Washington, Lake Quinault is 3.8 miles long and 2 miles wide, with acreage of over 3,700 acres. The Lake is part of the Quinault Nation's (Nation) trust lands and is bounded by Lake Quinault Lodge, the Rain Forest Resort Village, the Olympic National Forest (Forest), Olympic National Park, private lands and numerous cabins and recreational developments.

In the interest of protecting the water quality of the Lake, a wastewater treatment plant was constructed on the Forest. With payments from other landowners and permittees, the Forest entered into a sole-source Service Contract with the Nation to manage the plant over the past three years, citing the Tribal Forest Protection Act (TFPA) as an authority. This is the only example of a TFPA project that was based on protecting water quality and, by extension, the forest ecosystem.

While the Nation has decided at this time not to continue contracting with the agency to furnish the service, the Forest has indicated that they will provide a plant operator to treat the water and contribute to maintaining water quality.

Photo Courtesy of Gary Morishima



SUCCESS STORY PROFILE: THE PARRY PINYON PINE PROTECTION PROJECT

Pinyon seeds are often culturally important, but the pinyon trees are very slow growing. In particular, Parry pinyon, *P. quadrifolia*, which is highly regarded and sought by Southern California Tribes, can be more than 25 years old before it produces any cones.

In 2005, the Ramona Band of Cahuilla Indians, citing the Tribal Forest Protection Act (TFPA), requested assistance in protecting the remaining stands of Parry Pine from future catastrophic fires and Parry Pinyon Pines Protection Project (P5) was launched. The Santa Rosa Band of Cahuilla Indians joined as a partner to the project since both reservations are within or adjacent to the San Bernardino National Forest (Forest). The P5 has taken place on the San Jacinto Ranger District of the Forest and on the Ramona and Santa Rosa Indian Reservations in southern California.

Between 2006 and 2011, the Forest cleared away undergrowth and limbed lower branches so that a wild fire could potentially burn around or under the pinyon and not total consume them. This practice also makes the trees accessible for cultural gathering when there are cone crops.

Replanting is also an important component to the project. In 2005 both the Forest and Santa Rosa Indian Reservation gathered pinyon cones with the intention of propagating the seeds for future restoration. Trees were planted when opportunities became available.

The emphasis of this TFPA project has been primarily on fuel reduction surrounding pinyon trees. It is more effective to protect the existing stands than to be continually be replanting due to the frequency of catastrophic fires, droughts, insects and disease and the fact that the trees take so long to bear cones.

Hundred of pinyon trees have been protected within several hundred acres. Over 1200 hours were volunteered, including the participation of tribal members, young people, and the public, in support of the project over the six years. Several volunteers returned each year and there has been a steady increase in interest in the project and hours donated. The project benefits include strengthening Forest-Tribe relationships, enhancing the health and vigor of a culturally important natural resource and ensuring against its loss. The challenge will be to continue this effort in light of budget and personnel cost.

“This is a staple food for this area with a lot of cultural significance.” (Steven Estrada, Environmental Director, Santa Rosa Band of Cahuilla Indians)

Photo of Cahuilla-Apache young people courtesy of Daniel McCarthy, FS



SUCCESS STORY PROFILE: THE LOST BURROS PROJECT

In 2009, the White Mountain Apache Tribe (Tribe) and the Apache- Sitgreaves National Forest (Forest) entered into a participating agreement for the Los Burros Project in east-central Arizona to reduce fuels on the Forest.

This Tribal Forest Protection Act (TFPA) Project consists of three phases:

- Phase 1 is preparation and training with tribal crews;
- Phase 2 is undertaken by a third party under a pre-existing stewardship contract with mechanized equipment; and
- Phase 3 involves thinning trees in areas as determined from the previous two phases and will be conducted by the Tribe.

The Tribe and Forest collaborated to secure economic stimulus funding: approximately \$908,000 to the Tribe and an additional \$92,000 to the Forest for proposed training for tribal members and for administrative purposes. The proposal was successful because of its emphasis on capacity building, employment as well as reducing risk to tribal trust lands and resources.

There were a number of challenges the Tribe and Forest faced. Economic stimulus funding proposals needed to be quickly developed. Fortunately, the Forest and Tribe have a good working relationship. The Tribe is known for its hardworking crews and sharing a concern for preventing another catastrophic fire. Additionally, the Lakeside Ranger District recently completed the environmental compliance work in anticipation of a collaborative project with the Tribe and had in place the Forest's stewardship contract with another entity to perform the Phase 2 mechanized work.

Tribal Forester Jonathan Brooks noted that the Tribe wants to be able to build on this success and do more of the work, including the mechanized work, in the future. "This is a great project. Our crewmembers got training and also layout, marking and other experience. I like it!"

"The TFPA Project is a 'win-win' situation and we are grateful to participate in a precedent setting initiative." (Daniel Kessay, ARRA Field Operations Manager, WMAT)

"The field crews are really good," (Ed Collins, Lakeside District Ranger)

Photo Courtesy WMAT. From L to R, Mark Goklish, WMAT, Amy McCabe FS, Fred Cosay WMAT

ATTACHMENT B
Communications Strategy
Regarding
Tribal Forest Protection Act

OBJECTIVE

- Provide consistent messaging and communication among partners for highlighting the Tribal Forest Protection Act.
- Launch a campaign to celebrate the 10th Anniversary of the TFPA, between FS, ITC, BIA engaging Tribes and tribal organizations.
- Support the development of more TFPA projects.

KEY MESSAGES

- TFPA is a platform for an ongoing two-way strategic conversation between the FS and Tribes on how to take care of forests and communities across landscapes and programs.
- TFPA is also about redeeming the federal-tribal trust responsibility and the need to protect trust lands and resources.
- TFPA implementation benefits national forests and neighboring lands and is a vital tool in landscape scale work.
- TFPA can be linked to actions under the Collaborative Forest Landscape Restoration Program, and other initiatives concerning restoring and sustaining forested landscapes.

ACTIONS AND FORUMS

- Retain TFPA implementation as an open agenda item at a national level between ITC, BIA and the FS at ITC Board Meetings and Symposia.
- Develop an Interagency Steering Group to organize events to commemorate the 10th Anniversary of the TFPA in 2014.
- Promote TFPA at FS National Leadership Team meetings.
- Continue to include TFPA training and panel presentations during the ITC Annual Symposia.
- Continue to include TFPA in stewardship contracting training, expanding it to highlight successes and flexibility.
- Integrate TFPA training into FS Contracting, Grants and Agreement training and Partnership training (see Training Module 4).
- Incorporate TFPA projects into Secretarial and Chief's field visits.
- Communicate TFPA successes and lessons learned with related materials through tribal and agency website, blogs or other platforms in FS, ITC, BIA, and other media, as appropriate (see below).

CONTACTS

Name	Contact Name	Position	Address and Email	Phone
Media				
Evergreen Magazine	Jim Peterson	Co-founder and Executive Director of the Evergreen Foundation	Evergreen Foundation P.O. Box 1290, Bigfork, MT. 59911 Email: editor@evergreenmagazine.com	Tel: (406) 837-0966 • Fax: (406) 258-0815
Indian Country Today indiancountrytodaymedianet work.com/			Indian Country Today Media Network 590 Madison Avenue New York, NY 10022 (646) 459- 2326 customerservice@ictmn.com	(646) 459-2326
Forest Stewardship Council U.S. (FSC-US)			212 Third Avenue North, Suite 504 Minneapolis, MN 55401 E-mail: info@us.fsc.org	Phone: 1 612.353.4511
Tribal and Intertribal Organizations				
Intertribal Timber Council Website and Newsletter www.itcnet.org/	Laura Alvidrez Jim Erickson	Program Manager TFPA Project Coordinator	Intertribal Timber Council 1112 NE 21st Ave., Suite 4 Portland, OR 97232- 2114 E-mail: itc1@teleport.com	Phone: (503) 282-4296 Fax: (503) 282-1274

Agencies-FS, BIA

<p>FS – Chief’s National News Website www.fs.fed.us</p> <p>OTR Report www.fs.fed.us/spf/tribalrelations/</p>	<p>Fred Clark</p>	<p>Director, Office of Tribal Relations</p>	<p>US Forest Service 1400 Independence Ave., SW Washington, D.C. 20250-0003</p>	<p>202 (202) 205-1514</p>
<p>Bureau of Indian Affairs Website http://www.bia.gov/</p>			<p>Office of Public Affairs Department of the Interior MS-3658-MIB 1849 C Street, N.W. Washington, D.C. 20240</p>	<p>Telephone: (202) 208- 3710 Telefax: (202) 501- 1516</p>



WEBSITE POST FOR TFPA CAMPAIGN
(Use appropriate logo)

Protecting Our Forests: Implementing the Tribal Forest Protection Act

The Forest Service, the Intertribal Timber Council and the Bureau of Indian Affairs are working with Tribes to mobilize resources to protect forests. By implementing the Tribal Forest Protection Act (TFPA) we will be able to protect trust lands and ancestral forests now managed by the Forest Service and contribute to landscape scale efforts.

We want to bridge across boundaries.

Our belief is that we have to work together to build healthier forests. We support collaboration between forest managers and communities that depend on healthy forests.

TFPA provides a pathway.

The TFPA was passed in 2004 after catastrophic fires in the West devastated reservations and surrounding communities. The 10th anniversary of TFPA is coming up in 2014.

We want to commemorate the TFPA by are providing training and assistance to develop more projects and restore forest health at the forest level by 2014. Our strategy is to support local leaders to implement the TFPA.

Please join us! You can find us at: [ADD Website Links](#), [Facebook Page](#),

Get involved:

[ADD Webinars](#)

[Video Conferences & Workshops](#)



ATTACHMENT C:
SUMMARY OF PREVIOUS TRAINING SESSIONS

Approach and Findings:

During the course of interviews for success stories, Tribes and Forests were asked about any training they received or hear about. Additional contacts and queries were addressed to:

Organizers of forest, regional and interregional tribal relations and stewardship training sessions;

Tribal Leaders, tribal staff, FS line and staff who have been involved in actual or potential TFPA proposals and projects;

FS Regional Tribal Relations Program Managers; and

FS Office of Tribal Relations in Washington DC

This matrix summarizes the findings:

TFPA Training 2005-2012

Year	Location	Participants
2005	Viejas	Pacific SW Region FS launched TFPA training. Hosted by Viejas Tribe, Co-sponsored by Tribes, intertribal organizations, including ITC. Organized by Sonia Tamez
2005	R2, 3, 5, 6	TFPA cited in stewardship contracting training sessions for FS & BLM.
2006-11	R2, 3, & 5	Interregional Tribal Relations Training Sessions provided FS line officers and key staff with basic information about working with Tribes. Three of them, from 2006-2011 had short sessions on TFPA, including tribal and forest participants for several projects, e.g., the Mescalero 15 Springs TFPA project.
2008	Intertribal Timber Council Thirty-Second Annual Symposium. June 1 through 5, 2008 Hon-Dah, Arizona	Workshop on Stewardship Contracting: Building on Successes referenced TFPA.
2009	White Mountain Apache Tribe and the Apache-Sitgreaves National Forest Workshop	TFPA Workshop to identify potential TFPA projects. Ultimately resulted in 1 TFPA project and approximately a dozen other potential projects. Organized by Jonathan Brooks, Dan Meza, and Sonia Tamez. Participants included representatives from the San Carlos Apache Tribe and the Tonto National Forest.

2009	Region 3, Tribal Relations Program Manager, Dan Meza, and Dennis Dwyer, Stewardship Contract Coordinator	Integrated TFPA into Stewardship Contracting
2010 April 19-22	Intertribal Timber Council Thirty-Fourth Annual Symposium Mescalero, New Mexico.	Workshop on Stewardship Contracting and the Tribal Forest Protection Act contained important papers and information on TFPA in general and specific projects.
2011 June	Chippewa National Forest and Leech Lake Band of Ojibwe	Dan Meza participated in a video conference call that provided an introduction to TFPA. He and Sonia Tamez provided TFPA training materials and support.
2012 June 27	Chippewa National Forest and Leech Lake Band of Ojibwe	Sonia Tamez worked with representatives from Leech Lake Band of Ojibwe and Chippewa National Forest to put on TFPA training.

Two regions provided the majority of the TFPA training (R3 and R5). These sessions were located in Arizona, California and New Mexico and therefore limited in extent. There were three interregional training sessions that provided half an hour to two hours of information and examples to a few Tribes and Forests in Regions 2, 3, and 5. In terms of scale, the Intertribal Timber Council provided basic information and examples to the largest number of people; however, these sessions did not reach a lot of agency representatives.

Previous training materials (developed independently and collaboratively) by R3 Tribal Relations Program Manager Dan Meza and Sonia Tamez (during and after her tenure as

Region 5 Tribal Relations Program Manager) informed the Training Modules provided in this report.

Two sessions stand out. At a local level, one of the most productive sessions was a 2009 workshop cosponsored by the White Mountain Apache Tribe, the Apache-Sitgreaves National Forest and IDRS Inc., a non-profit organization represented by Sonia Tamez. After a commitment from tribal and agency leadership, Jonathan Brooks, Dan Meza and Sonia Tamez organized a workshop with the goal of identifying potential TFPA projects.

The workshop was preceded by a session Sonia Tamez had with the tribal forestry staff. An overview of TFPA was provided before commencing a discussion on the types of risk along the FS-Reservation boundary and how they might be reduced. Jonathan Brooks and his staff developed the material that mapped out the risks.

Sonia Tamez had another pre-workshop session with the FS Ranger and staff to go over TFPA and discuss what would be needed from them to prepare for the workshop (e.g., identification of where NEPA compliance work had been done in the past three years and where it was planned for the next five years). District Ranger Collins devoted considerable staff time and resources to the effort and engaged neighboring Districts. Regional Tribal Relations Program Manager Dan Meza brought in the support of the Regional Forester and key staff.

The workshop was convened the following month. After an overview of TFPA and joint objectives, approximately 30 participants went into breakout sessions to discuss where TFPA may be applicable and to identify potential projects that would reduce risks, restore resources and are priorities for both the Tribe and the Forest. Groups were organized around themes, which also correspond, to biophysical area.

Over the course of 1 and a half days, tribal and agency representatives identified a dozen potential TFPA projects for subsequent field validation. One Ranger announced that he was shifting his NEPA workplan to reduce the threats to tribal trust lands.

The lessons learned from this training session are:

- It is important to go beyond just providing information about TFPA.
- Leadership commitment was critical to set the objective of not just learning about TFPA together, but applying it together to identify projects and get results.
- The pre-workshop sessions were necessary to prepare for the workshop.
- Additional resources and expertise can provide support to Tribes and Forests in their efforts.

This workshop serves as the model for Module 4 and the actual agenda is included here:



Announcement

On March 17 and 18th, 2009, The White Mountain Apache Tribe will host a Tribal Forest Protection Act (TFPA) Workshop designed to identify potential projects that would protect tribal lands and resources. This workshop is the first one of its kind in Arizona.

Tribal leaders, program directors, agency line officers and key staff are invited to join us for this important session held at the Hon-Dah Conference Center. The workshop is scheduled to run from Tuesday, March 17 at 8:30 to Wednesday, March 18 at noon.

There is no registration fee, but pre-registration is needed. You may e-mail Sonia Tamez at sonia@indiandispute.com. Room reservations can be made at the Hon-Dah Resort Casino and Conference Center at 1/800/929-0299. You may visit www.hon-dah.com for directions.

For further information, please contact Sonia Tamez at 510/502-1425 or Jonathan Brooks at 928/338-1665.

Sponsors of the TFPA Workshop include:

The White Mountain Apache Tribe

The Indian Development Resources and Services

The US Forest Service

AGENDA

Tribal Forest Protection Act Workshop

Hon Dah Resort

March 17-18, 2009

March 17, 2009

Tuesday Moderator for the Day

Reginald Armstrong, WMAT Forestry Program Contract Manager

8:30 AM Traditional Prayer

Ramon Riley, Cultural Center

8:45 Welcome

Honorable Ronnie Lupe, Chairman, White Mountain Apache Tribe

9:00 WMAT Forestry Program Background

Jonathan Brooks

9:10 Workshop Objectives

Ed Collins, Lakeside District Ranger

9:20 Introductions

- 9:30 Key Note Address: The Tribal Forest Protection Act
Dave Nenna, Chief Executive Officer, Tule River Economic Development Corporation
- 10:15 Break
- 10:30 TFPA Project Orientation
Sonia Tamez, Indian Development Resources and Services and Dan Meza, Regional Tribal Relations Program Manager
- 11:30 Lunch (on your own)

1:00 Break-Out Sessions

Group Facilitators: Reggie Armstrong, Jonathan Brooks, Daniel Kessay, Dan Meza

The purpose of the breakout sessions is for adjacent land managers to discuss where TFPA may be applicable and to identify potential projects that reduce risks, restore resources and are priorities for both the Tribe and the Forest. Also, if time is available, provide a rough estimate of time to develop a proposal, do any NEPA and other compliance work if needed.

Groups will be organized around following themes, which also correspond, to biophysical areas:

Woodland

Burned Area/Restoration

Wildland/Urban Interface

High Elevation Mixed Conifer

3:00 Break

3:20 Resume Break Out Sessions

4:30 Close For the Day

March 18, 2009

Wednesday Moderator for the Day

Daniel Kessay, WMAT Field Operation Manager

9AM Connect to Previous Day and Outline the Day to Come
Ranger Ed Collins

9:30 Report from Break-out Sessions
Focusing on what projects they found that:
Reduce risk,
Restore resources and
Are a priority for the Forest and Tribe

10:30 Break

10:50 Next Steps: Jonathan Brooks, Dan Meza & Sonia Tamez

11:30 Close for the Day

Travel Home Safely!

The largest regional TFPA session was held in 2005, organized by Pacific Southwest Regional Tribal Relations Program Manager, Sonia Tamez. It was cosponsored and hosted by the Viejas Band of Kumeyaay Indians. Other cosponsors included San Manuel Band of Serrano Mission Indians, the Tule River Tribe, the California Indian Forest and Fire Management Council, the Intertribal Timber Council, the USDA Pacific Southwest Region of the Forest Service, USDI Bureau of Land Management (the agenda is included on the next page, followed by a table summarizing TFPA training events).

This workshop provided a lot of visibility to TFPA in the West and engaged FS headquarters in Washington, DC. Tribal elected officials opened the session and tribal leaders and staff from across California participated. Senator Feinstein provided a videotape speech. The Regional Forester from the Pacific Southwest Region, Jack Blackwell, and the California State Director from BLM, Mike Pool, highlighted the importance of the workshop with their active involvement and endorsement. Many other line officers attended.

Training materials included a TFPA tip sheet initially developed by Mark Phillips for ITC and others and modified over the years by R5 and R3. (Please see the latest version in Appendix A). The Washington Office Timber staff, Darci Birmingham, developed a PowerPoint presentation, which was soon expanded elsewhere in R5 and R3 and continues to evolve.

Soon afterwards Tribes and Forests in various parts of California, with support and assistance, from the Regional Office timber and tribal relations staff, were meeting to discuss specific potential TFPA projects and started generating proposals. The agenda follows below:



WORKING TOGETHER

Making the Tribal Forest Protection Act

Work for You

Workshop

March 15 & 16, 2005

Hosted by

Viejas Band of Kumeyaay Indians

Alpine, California

Sponsored by

San Manuel Band of Serrano Mission Indians

Tule River Tribe

Viejas Band of Kumeyaay Indians

California Indian Forest and Fire Management Council

Intertribal Timber Council

USDA Pacific Southwest Region of the Forest Service

USDI Bureau of Land Management

Tuesday, March 15

Facilitator: Susan Johnson (Three-Affiliated Tribes) Rocky Mountain Regional Tribal Relations Program Manager

8:00 Welcome

Honorable Anthony Pico, Chairman, Viejas Band of Kumeyaay Indians

Tina Terrell, Cleveland Forest Supervisor

Gene Zimmerman, San Bernardino Forest Supervisor

Opening Prayer: Viejas Band of Kumeyaay Indians

8:30 Introductions

Susan Johnson

Objectives, & Overview of the Agenda:

Sonia Tamez, Pacific Southwest Region Tribal Relations Program Manager

9:00

Opening Comments

Honorable Deron Marquez, Chairman San Manuel Band of Serrano
Mission Indians

Honorable Alan L. Barrett, Councilman, Viejas Band of Kumeyaay
Indians

Regional Forester Jack Blackwell, Pacific Southwest Region

California BLM State Director Mike Pool

Honorable Senator Dianne Feinstein video message

10:15

Break

10:30

The Tribal Forest Protection Act of 2004:

David Nenna, Tule River Tribal Administrator

James Peterson, Regional Director, US Senator Diane Feinstein

11:30

Lunch

12:30

Tribal-Agency Partnerships and Stewardship Contracting

Moderated by Ken Wilson, BLM Tribal Liaison

Darci Birmingham, FS National Stewardship Contracting
Coordinator

Jack G. Peterson, BLM Idaho TFPA and Stewardship Coordinator

Jim Fletcher, BIA, Southern California Agency

Honorable Leaf Hillman, Vice Chairman, Karuk Tribe

Cal Mukumoto, Warm Springs Tribal Initiative

2:00 Discussion, Questions, & Answers

2:45 ***Break***

3:00 **Agency Implementation of TFPA**

Jack G. Peterson, BLM Idaho TFPA and Stewardship Coordinator

Carolyn McClellan, BLM Group Manager, Tribal Consultation

Marsha Butterfield, Asst Director, FS National Office of Tribal
Relations

3:45 **Tribal/Federal Partnerships – Strengthening Families and
Communities with Good Jobs- The SBA Initiative**

Economic development of American Indian owned/operated small
businesses initiative in response to the Healthy Forest Restoration
Act

Wes Martel, Executive Director of the Inter-Tribal Economic
Alliance (ITEA)

5:00 **Adjourn**

7:00 Banquet Dinner

Wednesday, March 16

Moderator Don Golnick, FS Regional Stewardship Contracting Coordinator

8:00 **Introductions & Objectives: Collaborating from Concept to Proposal**

How to develop fuels reduction and other projects through contracts, grants, and agreements with FS and BLM.

8:10 **Overview on FS and BLM Grants, Agreements, and Contracts**

Don Golnick, FS Regional Stewardship Contracting Coordinator

Dave Allasia , FS Regional Grants & Agreements Coordinator

Jack G. Peterson, BLM Idaho Tribal Forest Protection Act and Stewardship Coordinator

9:10 **Fuels, Tools (and funding!)**

Mike Landram, FS Regional Silviculture Group Leader

Gary Thompson, Regional Fuels Coordinator

Ellen Pollema, Board member California Fire Safe Council

Chris Walters, Fire Captain, Disaster Services Coordinator, San Manuel Band of Serrano Mission Indians.

9:45 ***Break***

10:00 **Descanso Ranger District, Unincorporated Community of Alpine, and Viejas Reservation Case Study**

How can the TFPA and other tools be applied to address the fuels and fire break issues and needs surrounding these land ownerships and jurisdictions?

Tom Gillett, Descanso District Ranger, Cleveland National Forest

Acree Shreve, Descanso District Fire Management Officer

Chris Anderson, Descanso Fuels Specialist

Viejas Fire Committee

Neville Connell, Chair Alpine Public Health, and Safety Committee;

11:30 ***Lunch***

12:30 **Field Trip**

Carveacre Community Protection Project

Chris Anderson, Descanso Ranger District Fuels Battalion Officer and Carveacre Fire Safe Council

4:00 ***ADJOURNMENT***

Travel home safely!

**ATTACHMENT D: EXCERPTS OF EXISTING FS DIRECTION AND GUIDANCE
WITH RECOMMENDED CHANGES**



FSH 2409.19 - RENEWABLE RESOURCES HANDBOOK

CHAPTER 60 - STEWARDSHIP CONTRACTING

Amendment No.: 2409.19-2008-7

Effective Date: October 21, 2008

Duration: This amendment is effective until superseded or removed.

Approved: CHARLES MYERS
Associate Deputy Chief, NFS

Date Approved: 10/09/2008

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 2409.19-2008-6 to 2409.19_contents.

New Document	2409.19_60	65 Pages
Superseded Document(s) by Issuance Number and Effective Date	2409.19_60 (Amendment 2409.19-2005-1, 12/05/2005) id_2409.19-2007-1, 05/08/2007	58 Pages 9 Pages

Digest:

Notice of this final direction was published in the Federal Register on October 21, 2008 (73 FR 62463).

60 - Incorporates direction contained in interim directive (ID) 2409.19-2007-1 ([Note: This Handbook is finalized as of 2008. It could be moved to FSM 1563 with corrections and cross-referenced in appropriate sections here. Edits are provided here to facilitate needed changes.](#)) for evaluating proposals to enter into an agreement or contract with Indian tribes ~~meeting certain criteria/~~ to carry out projects ~~meeting certain critiera~~ on National Forest System lands to protect Indian forest land, rangeland or tribal communities from fire, disease, or other threats stemming from Forest Service administered lands [and related restoration.](#)

60.3 - Adds new policy for preliminary collaboration and evaluations for a potential Tribal Forest Protection Act project.

Digest--Continued:

60.5 - Adds definitions for Bordering on and Adjacent to, Indian Forest Land and Rangeland, Indian Tribe, National Forest System Lands, Public Lands, Secretary and Tribal Community.

61.11 - Revises direction to include the denial of an appeal.

61.17 - Establishes code and caption and sets forth new direction for "Projection Selection Criteria Under the Tribal Forest Protection Act."

61.18 - Establishes code and caption and sets forth new direction for handling "Responses to Tribal Requests Made Under the Tribal Forest Protection Act."

61.19 - Establishes code and caption and sets forth new direction for handling "Responses to Tribal Requests Made Under the Tribal Forest Protection Act of 2004 from Tribes in Alaska."

61.7 - Establishes code and caption and sets forth new direction for "Notice of Denial for Projects Submitted Under the Tribal Forest Protection Act."

62.14 - Establishes code and caption and sets forth new direction for determining "Contract Type Under the Tribal Forest Protection Act."

62.5 - Establishes code and caption and sets forth new direction for "Proposal Evaluation and Determination Factors Under the Tribal Forest Protection Act of 2004" for federally recognized Indian tribes.

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The TFPA section should be moved to FSM 1563 since TFPA is not confined to stewardship contracting. Edits are provided here to facilitate changes.

9. Public Law 108-278, July 22, 2004, Tribal Forest Protection Act of 2004.
Authorizes the Secretaries of the Interior and Agriculture to enter into contracts or agreements with Tribes for work on FS or BLM lands in order to protect tribal trust lands and tribal communities or to restore such lands when certain criteria are met. ~~enter into an agreement or contract with Indian tribes meeting project selection criteria established in the Act to carry out projects on NFS lands to protect Indian forest land, rangeland, or tribal communities when the NFS lands are bordering or adjacent./~~

60.2 - Objectives

10. Forest Service officials should collaborate with tribes and may provide advice and information to Indian tribes in advance of tribes' submitting proposals for stewardship contracts or other instruments or other contracts or agreements to assist Indian tribes in developing proposals that are consistent with the selection criteria set forth in the Tribal Forest Protection Act.

13. Approve or deny or consult regarding any tribal request under the Tribal Forest Protection Act of 2004 through current level of delegated authority appropriate to the type of contract or agreement authority used.

60.42b - Forest Supervisors

It is the responsibility of the forest supervisor to:

2. Ensure that all stewardship contracting projects are in accordance with land and resource management plan objectives, and are developed in collaboration with cooperating Federal, State, and local agencies, tribal governments, non-government organizations, local communities, and any interested groups or individuals, as appropriate.

9. Prepare proposal response and recommendation for regional forester decision for tribal requests made under the Tribal Forest Protection Act of 2004. The recommendation of what borders on or is adjacent to Indian forest land, rangelands, or a tribal community must be made by the district or forest line officer after consultation with the Indian tribe and consideration of the threat potential and geographic location and need for restoration.

60.42c - District Rangers

It is the responsibility of the district ranger to:

14. Receive and acknowledge tribal requests made under the Tribal Forest Protection Act of 2004 and make recommendations to the forest supervisor. The recommendation of what borders on or is adjacent to Indian forest land, rangelands, or a tribal community shall be made by the district or forest line officer after consultation with the Indian tribe and consideration of the ~~trust~~/threat potential and geographic location and need for restoration.

60.5 - Definitions

Indian Forest Land or Rangeland. In accordance with the Tribal Forest Protection Act, land that is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and (a) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103); or (b) has a cover of grasses, brush, or any similar vegetation; or (c) formally had a forest cover or vegetative cover that is capable of restoration.

Indian Tribe. Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; (P.L. 103-454, 25 U.S.C. 450b).

61.11 - Appeals

1. All projects are subject to applicable agency appeals and dispute resolution processes in accordance with Title 36, Code of Federal Regulations, Part 215.
2. The denial of a project proposed by tribes under the Tribal Forest Protection Act of 2004 is not subject to administrative appeal because such proposals are not Forest Service proposed actions under Title 36, Code of Federal Regulations, Part 215, they are tribal proposals. [However, FSM 1563 provides for resolving any disputes between Tribes and the FS.](#)
3. Proposals that meet the criteria set forth in the Tribal Forest Protection Act and which are then considered and analyzed by the Forest Service in a decision consistent with NEPA, are subject to applicable agency administrative appeal procedures.

61.17 - Project Selection Criteria Under the Tribal Forest Protection Act of 2004

As stated in section (c) of the Act, the Forest Service may consider proposals submitted by an Indian tribe to enter into a contract or agreement to carry out a project to protect Indian forest land or rangeland that meets all the following criteria:

1. The Indian forest land or rangeland borders on or is adjacent to land under the jurisdiction of the Forest Service;
2. The Indian forest land or rangeland is under the jurisdiction of an Indian tribe or of a tribal community of a federally recognized tribe;
3. The National Forest System land either poses a threat to the Indian forestland or rangeland or a tribal community; or the land is in need of land restoration activities;
4. The activities proposed in the project are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and
5. The National Forest System land described in the application of the Indian tribe involves a feature or circumstance unique to that Indian tribe, including [treaty](#) rights, biological, archaeological, historical, or cultural circumstances.

61.18 - Responses to Tribal Requests Made Under the Tribal Forest Protection Act of 2004

Line Officers may accept proposals only from a representative of the governing body of a tribe, such as a Tribal Council or Tribal Chairperson. The tribe may submit a proposal on behalf of a tribal member that owns an allotment that meets the qualifications for a project under section 61.17.

PROPOSAL EVALUATION AND DETERMINATION FACTORS.—In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the Regional Forester may—

(1) use a best-value basis; and

(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—

(A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or range- land of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types; (

G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

After a request by an Indian tribe to enter into a stewardship contract or agreement, the agency ~~has~~ should respond within 120 days to the Tribe either accepting or denying the proposal with an invitation to consult:

- ~~1. Issue a public notice of initiation of any necessary environmental review;~~
- ~~2. Issue a public notice of the potential of entering into an agreement or contract with an Indian Tribe; or~~
- ~~3. Issue a notice of denial to the Indian tribe. Note: The TFPA is permissive, e.g., the agency may issue a notice within 120 days. This notice would occur during the NEPA phase anyway so why impose additional, redundant requirements with a deadline? No other group is subject to a notification requirement for an agreement.~~

61.19 - Responses to Tribal Requests Made Under the Tribal Forest Protection Act of 2004 from Tribes in Alaska

Lands selected by Alaska native corporations under Alaska National Interest Lands Conservation Act are not held in trust or with a restriction against alienation. Therefore, such lands are outside the scope of the Tribal Forest Protection Act.

The Tribal Forest Protection Act states that “Indian forest land or rangeland” means land that is held in trust by or with a restriction against alienation by the United States for an Indian tribe or a member of an Indian tribe. Individual Indian allotments, of which there are some in Alaska, are lands held with a restriction against alienation. Therefore, a tribe to which the individual Indian allottee belongs may submit a request to the Forest Service to enter into an agreement or contract to carry out a project to protect the allottee’s land, which would then be considered according to the criteria in section 61.17. Similarly, tribal reservations in Alaska, such as the Metlakatla Reservation, would be lands held in trust and thus are eligible under the Tribal Forest Protection Act.

61.7 - Notice of Denial for Projects Submitted Under the Tribal Forest Protection Act

As stated in Section (2)(e) of the Act, if the tribe’s proposal pursuant to the Tribal Forest Protection Act for entering into a contract or agreement or other instrument with the Forest Service is denied, the regional forester ~~may~~ should (Note: given the government-to-government relationship, the RF should communicate with the Tribe why a proposal was not approved. TFPA doesn’t require it, but it is consistent with the principles of good communications and governmental relations) issue a notice of denial to the Indian tribe which:

1. Identifies specific factors that caused, and explains the reasons that support, the denial.
2. Identifies potential courses of action for overcoming specific issues that led to the denial.
3. Proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in National Forest System land.

62 - SELECTING STEWARDSHIP CONTRACTS

The Forest Service may use all available authorities to involve a wide range of contractors or recipients. Methods may include full and open competition, Small Business Preference Programs (procurement), the Javits-Wagner-O'Day Program (designed to provide employment for blind people and people with disabilities), Small Business Sawmill Programs, multi-year contracts, multiple year contracts with optional years, commercial items, or performance-based service contracting. Determine which authority to use based on the goals of the individual stewardship contracting projects, market research, and feedback resulting from collaboration.

62.1 - Contract Type

There are five contract types approved for use in stewardship contracting projects:

1. Integrated resource timber contract-scaled,
2. Integrated resource timber contract-tree measurement,
3. Integrated resource service contract-scaled,
4. Integrated resource service contract-tree measurement, and
5. Service contract.

62.14 - Contract Type Under the Tribal Forest Protection Act

1. Proposals submitted under the Tribal Forest Protection Act, may be eligible for consideration under applicable sole source contracting authorities. [The TFPA proposal evaluation and determination criteria include many factors that can be used to justified a sole source contract, including, but not limited to:](#)

[A\) the status of the Indian tribe as an Indian tribe;](#)

[\(B\) the trust status of the Indian forest land or range- land of the Indian tribe;](#)

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types; (

G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

-Follow the procedural direction for the application, development, execution and administration of contracts and agreements in FSH 1509.11 and FSH 6309.32.

2. Tribal Forest Protection Act projects may be implemented through stewardship contracts and agreements and other instruments as appropriate. Forests shall select the best instrument appropriate to the circumstances in collaboration and consultation with Tribes.

a. Stewardship contracts or other instruments may be used to help meet the intent of the Act to reduce the threat to Indian forest land, rangelands and tribal communities. Stewardship contracts can maximize the efforts and areas treated when there are goods that can be traded for the services work to be done to reduce the threat. (For additional information see FSH 1509.11 and FSM 6300).

b. For stewardship contracts or other instruments involving goods traded for services, the integrated resource contracts may be used and the service or timber version may be selected in the same manner as any other stewardship contract. For contracts in which there are no goods to be traded for the services to be accomplished, a traditional procurement service contract may be used.

c. Agreements may be used when appropriate. Refer to FSM 1580 and contact the designated regional grants and agreement specialist for advice.

~~The use of grants is not authorized under the Tribal Forest Protection Act.~~

Grants can be used when there are TFPA projects that are authorized by other appropriate authorities.

~~Moved to previous section.62.5 – Proposal Evaluation and Determination Factors Under the Tribal Forest Protection Act of 2004~~

~~As stated in section 2(d) of the Act, in entering into an agreement or contract in response to a request of an Indian tribe, the authorized officer may:~~

- ~~1. Use a best value basis, and~~
- ~~2. Give specific consideration to tribally related factors in the proposal, including:~~
 - ~~a. The status of the Indian tribe as an Indian tribe;~~
 - ~~b. The trust status of the Indian forest land or rangeland of the Indian tribe;~~
 - ~~c. The cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;~~
 - ~~d. The treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;~~
 - ~~e. The indigenous knowledge and skills of members of the Indian tribe;~~
 - ~~f. The features of the landscape of the land subject to the proposal, including watersheds and vegetation types;~~
 - ~~g. The working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and~~
 - ~~h. The access by members of the Indian tribe to the land subject to the proposal.~~
- ~~3. Proposals by Tribes must be authorized in writing by the tribal government./~~

64.1 - Best Value Determination for Agreements

When considering entering into an agreement, best value determinations must be adjusted to reflect the purposes of the partnership. While cost always has to be a consideration, non-cost factors are considered more important than cost. Possible non-cost related best value considerations include:

1. The extent of mutual interest and benefit.
2. The advantages and effectiveness of mutual participation.
3. Mixed ownership.
4. Joint expertise.
5. Factors relevant to cost, such as volunteerism, donations, cost sharing, and so forth.

6. The TFPA factors for including, but not limited to:

(A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or range- land of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members

of the Indian tribe;

(F) the features of the landscape of the land subject

to the proposal, including watersheds and vegetation types;

(G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting

the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.



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 [8EA; E@CJc=C 61* /! (48E : 9 8EA; E@G; G; E@NF; /, B /, 12 F- /? * 8\$ ' + @SS\$ /'
 %": F7JS: %\$7" /! - F@L - #7% * 8# 1\$ + @M

7* /; E@ /+AG! E@ /-FA! > * 9@NB8; <A! 7Ca! 2553R31?F: > @ " \$! : @#8#E@C@!
 W F; !; N@! !9E@; IB9; <*;>; !G- > @; !A8E <B /! G; @C@ E9 @; 1@ /B /; E@
 E> /+E /! - 8E@ * @; @ <EB - @ @ /! /! A; : 9B /; E@ @ /! /! E; E@ /! @ E9 @; !
 > * G@E8E @PJ * @; @; IB - @ @ - 8E@ @ < ! @ / 9 + 9 * BG - > @; ! @; !E <A! @!
 G; @C@ !> * G@E@J * @; @; ! * B @ / 9 + 9 * BG - > @; ! - 8E@ < /; E: 9: > * > / A @
 G; E; / @; E-8 / B; @ @ / 7; < / : 9K @ @ @; !H; !89 @; IB8; <A! M @ @ (1? * < ! * B
 7; < / : 9H; !89 @; E@ / @! ; <834Ca! " #53#27KH@!!

e @A! B; ID * /f A! ! < N * B @! ; < * B @! - : /f @ E: / @ > F: E 1: ! > * @; - ; @ * @G @! ;
 E: 9; / * 8 @ @ * 8! F @! ? FAB * B @! ? * ; @C@ ! = B @! @ @ la; : < * B @! ? * ; @C@ !
 K @ @ @ U; EA; ; ; !4? KJ 6. ND: N * B @ / W * G * 9@NA. * Q E < E@A; < ; 9 D R M F; !a? KJ!
 D @ @ A; ! @ IKJ V 2\$ 1 / @; ! : ! G > N @ @! G; @C@ ! * B @ / 1; <EB - @ @ @ / Z; @C@ @ @
 J, > / @; @ BK /! @ @ @; ! = B @! @ BC : 9; <J A @ < ; @; [8EA; E@ @ @: @; !4 @ J Z6B /!

information only.

Procurement Notification requirements

- Form AD-1205
- Description of the product or service to be acquired.
- North American Industry Classification System (NAICS) and Product/Service Code (PSC) selected.
- Length of Contract.
- Estimated value for first year and total for all years including options.
- No documentation need be submitted as requested in the Non-Restricted Determination section of the AD-1205.

Contact Byron Brown at (703) 605-4544 should you have questions.

/s/ Ronald E. Hooper
RONALD E. HOOPER
Director, Acquisition Management

cc: pdl wo ops aqm directors
pdl wo ops aqm Procurement Analysts
Richard Fitzgerald
Tim Dabney

This letter was cited by field personnel as an example of inconsistent direction and guidance that affects TFPA implementation. Priority concerns include Paragraph 4, which precludes participation in SBA programs although it isn't prohibited by law. SBA and the FS support tribal capacity building and business development so exclusion of SBA program set-asides seems counter indicated. Paragraph 4 also states that open and full competition should be used on all stewardship projects, precluding sole source awards. However, the 5th paragraph seems to contradict that exclusion by discussing a process for less than full and open competition.

It is recommended that another letter be disseminated to eliminate inconsistencies in the November 2009 document and to clarify that stewardship projects can be set asides and sole source awards can be made for TFPA projects.

APPENDIX E: HYPERLINK TO MODULES 1-4 POWERPOINT PRESENTATIONS

(to be added)