

Joint Hazardous Fuel Reduction Projects

I. Opportunity:

Finding the correct vehicle to allow the public to implement hazardous fuel reduction projects on NFS lands.

II. History:

There has been a huge emphasis in the past couple of years on identifying, then reducing the fire hazard not only for National Forest System lands, but other lands that adjoin it. The recognition of this hazard is shown by the increase in the numbers of Fire Safe Councils, and other like-minded organizations that have a keen interest in the safe guarding of their respective communities. The recently approved Kuehl Bill (SB1369, signed September 23, 2004), which increases structure clearance in the wildlands of California from 30 to 100 feet, is another example of actions taken to reduce fire damage on private property.

The Forest Service, along with other Federal and State entities, has made millions of dollars available in support of these fuel reduction projects. The types of projects that we are supporting run the full gamut from stand alone projects where there is no involvement needed by the Forest Service, to others where the projects are being actively coordinated between the parties; e.g, fuel reduction through prescribed fire or fuel break planning that is on both private and public lands. There are many examples where a community has the funding to take on project(s) but it may be that while the project is on private lands, to make the project as effective as possible additional work should be taking place on bordering NFS lands. For a variety of reasons; e.g., funding restraints, work force management, or priority setting, there are times when the Forest Service cannot participate in a timely fashion. We have had several instances where the other parties, at no cost to the Forest Service were more than willing to continue their projects on to NFS lands.

We need to have a clear understanding that no one can work on NFS lands without our permission. This permission may be in the form of a contract, Special Use Permit, Volunteer Agreement, or other agreement. What all these have in common is that they are all written documents.

III. Authorities:

This “white paper” is not intended to take the place of Forest Service policy or regulation. It also cannot be used as support to circumvent other, more appropriate methods of getting the work accomplished. The sole purpose of this paper is to offer viable methods to partner with others.

Each situation is going to be a little different, but we have the existing authorities to partner with others and leverage contributions so that both parties benefit.

The following example illustrates the intent of this paper. A group of land owners, using their own funding, are voluntarily performing hazardous fuel reduction on their lands. Several of the buildings or structures are less than 100 feet from the Forest Service lands. They would like to continue the work they are doing on their lands onto the NFS lands so that the end result will be a much stronger and more useful fuel break. Several questions to consider include:

- ? Are there benefits to both them and us? Yes.
- ? Do we have the authority to enter into a partnership regarding this type work? Yes.
- ? Can we enter into partnerships with individuals? Yes.
- ? Can we enter into partnerships with organizations? Yes.
- ? Can we enter into partnerships with a loosely formed group of individuals that have common interests but no formal charter? No. This last one is pretty simple principle to grasp; if it’s a group of individuals then no single individual has the legal authority to bind the others. In this last case you might consider getting the group together with a local Fire Safe Council, or other legally recognized entity, then entering into a partnership with that entity as the umbrella for the others to participate.

There are three (3) authorities that lend themselves to allowing others to work on projects on NFS lands:

- ? Challenge Cost Share (CS) (P.L. 102-154)
- ? Participating Agreement (PA) (P.L. 94-148)
- ? Wyden Amendment (WY) (P.L. 107-63)

All three require mutuality of benefit and interest in the project results; e.g., if there is no benefit to the Forest Service then we should not enter into the relationship. As a general rule, use of CS and PA authorities are restricted to projects on NFS lands. WY can be used for projects both on and off NFS lands.

If, under any of the three authorities cited above, our partners are going to be performing work on NFS lands, then in the agreement it is our responsibility to be very specific (prescriptive) on exactly what activities are to be performed and to what standard. It is also our responsibility to assure that adequate NEPA analysis is in place that covers this type of work in that specific location. We are also responsible to monitor all work to insure compliance with the established standards. These are examples of our contribution to the partnership. The partner's contribution will include items like labor, equipment, and supplies. Even if there is no transfer of funds between the Forest Service and the partner there is still value being exchanged so an authority has to be cited and a financial plan developed.

If you think you may have a situation that meets some of the things discussed herein we strongly encourage you to get together with your Grants & Agreement (G&A) Specialist to discuss project scope, authority, format, and agency requirements. For example, if the partners plan to work on NFS lands using Federal dollars they received via another grant, then it may be that those dollars cannot be used on Federal public lands. Alternatively they may be used, but cannot count as a match under your proposed agreement with them. These are the sorts of questions that your G&A Specialist can sort out for you.

A related question has come up on whether or not the Forest Service can perform work off NFS lands without compensation; e.g., perform a prescribed burn on private lands or other hazardous fuel reduction projects. The simple answer is yes we can, **IF** (1) there is direct benefit to NFS lands, (2) we have written permission by the landowner to perform the work, and (3) we have a liability release from the landowner, in case there is damage to the property as a result of our presence there.

IV. Summary

The authorities exist to allow others to work on NFS lands. It is our responsibility to insure that the work to be done (1) has direct benefit, (2) is well defined, (3) a written agreement is in place, and (4) subsequent work is monitored. These authorities are an excellent way to leverage opportunities for improving relationships with neighboring landowners, getting beneficial work done on NFS lands and adjoining property that directly affects NFS lands, and opening the door for future partnerships.