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Presentation Title:	Revised Forestland Protection Agreements; Clackamas-Marion and Linn Forest Protective Associations
Date of Presentation:	June 3, 2009
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SUMMARY

The purpose of this agenda item is to seek the Board of Forestry’s review and approval of two revised forestland protection agreements in accordance with the Board’s rules. The agreements were recently negotiated between the State Forester and each of the Clackamas-Marion Forest Protective Association (CMFPA) and Linn Forest Protective Association (LFPA), to update and replace the previous agreements in effect since 1976 and 1979, respectively.

CONTEXT

Under ORS 477.210, every forestland owner is responsible for protecting his/her land from the start or spread of fire and may do so individually under an approved plan (none currently in effect), by being a member of a forest protective association (FPA), or by paying an assessment to the State Forester to provide protection. Twelve forest protective associations currently exist in Oregon and many forest landowners, particularly those with the largest holdings, comply with the statute through membership in these associations.

In three forest protection districts, Coos, Douglas and Walker Range, the local forest protective associations still actively provide fire protection services for their members (“operating associations”) using their own employees as most FPAs did in the earlier history of fire protection in Oregon. As a matter of administrative efficiency, these three associations also provide for the protection of all other forestlands in the district, by agreement, that would otherwise be the responsibility of the State Forester. These agreements, updated in 2005 and approved by the Board of Forestry, establish the terms under which the associations provide this service for the State Forester, spelling out the actions to be taken, reports and records required, how budgets will be developed and approved, addressing administrative matters such as payments, liability, insurance and how issues under the agreement will be resolved.

In the remaining nine forest protection districts, the FPAs provide fire protection services to their members through forestland protection agreements or “reverse contracts” wherein the Department of Forestry provides the service the same as it is required to by statute for non-members, however, with the FPAs having a great deal of participation in the

budgeting and planning processes of the protection district and providing cooperation in suppression activities to the extent of their capabilities.

ORS 477.406 (Attachment 1) provides the authority for entering into such agreements and further specifies that all such agreements “must be negotiated in accordance with procedures specified by rules of the State Board of Forestry.” OAR 629-041-0100 (Attachment 2) sets out those procedures and requires that “the Board shall review any base level contract or agreement between the forester and a forest protective association.” The Board’s review should determine whether any such agreement is limited to matters addressed in ORS 477.406, conforms to the statutes and rules, is negotiated in good faith by knowledgeable individuals to accomplish the complete and coordinated fire protection system and is economically efficient.

BACKGROUND

Since the first decade of the twentieth century when organized forestland fire protection began in Oregon, there have been dozens of configurations of landowner organizations and state patrols or districts that took responsibility for fire suppression on the non-federal forest lands. However, since 1965 the system has pretty well stabilized with few changes and the same twelve forest protective associations have existed since that time roughly corresponding (though not exactly) to the twelve forest protection districts established by the State Forester in administrative rule.

From 1964 to 1979 each of the associations entered into new or revised forestland protection agreements to establish the formal basis for cooperation between the forester and the association on their respective districts. In many cases, these agreements coincided with a process of “reversing contract” wherein the associations were transitioning from providing protection to their members and non-members in the district to having the department provide the protection services to all forestlands.

For the most part, contract reversals that occurred in or prior to the 60’s, were the result of financial issues following large fires or repeated difficult fire seasons. In 1971, the Oregon Forest Practices Act was established raising subsequent issues of possible conflicts of interest in the enforcement of forest laws that might also exist with fire prevention matters.

In the 30 to 45 years since most of the existing agreements were last comprehensively updated or established, not much has really changed in the basic concepts of the agreements, but some of the details require updating and the language of the agreements can certainly be made less archaic and simplified as required by state law. Specifically, the district boundaries and names have changed that relate to the LFPA and CMFPA agreements (also applies to the Eastern Lane Forest Protective Association) causing the department to request that those two FPAs engage in negotiations to update their agreements. Further, given the large sums of money involved in these agreements, it is important to periodically review the agreements for legal sufficiency in protecting the state’s financial interests. The department hopes to similarly engage each of the other “non-operating” associations in the near future.

In addition to the three “operating” associations already referenced, two basic models emerged for the agreements between the State Forester and the FPAs arising from

differences in facilities ownership. In four cases, including LFPA, the associations retained district motor pools (as opposed to other districts whose firefighting equipment is part of the department's statewide motor pool) and some of the four have land or structures used as part of the protection facilities that are owned by the FPA (paid for with funds that do not include non-member assessments). The remaining five associations, including CMFPA, do not have any facilities that were funded other than from equal assessment of all the lands in the district. Also, some FPAs choose to collect fire patrol costs from their members and subsequently pay the cost to the State Forester en masse (LFPA), while other associations allow the county assessor to collect their costs along with property taxes in the same manner prescribed by statute for non-members (CMFPA).

In developing the new protection agreements for CMFPA and LFPA, templates have been created for the two different models that will make it relatively easier to proceed in revising all the remaining FPA agreements over the next few years.

A number of individuals were involved in the negotiation and development of these agreements. District and FPA representatives included District Foresters Lena Tucker, South Cascade District and Gregg Cline, North Cascade District; Pete Sikora and Milt Moran of LFPA; and Randy Silbernagel of CMFPA. Retired former Protection Division Chief, Charlie Stone, provided overall coordination and management of the project. In addition, the agreements were provided close examination and legal review by Michele Logan and Paul Weddle from the Attorney General's office and private counsel engaged by LFPA.

The Clackamas-Marion and Linn agreements (Attachments 3 and 4, respectively) are very similar over the first five articles except for the district identifiers in the first two pages and Section 3.5. The remaining articles and exhibits, however, are markedly different from each other with the Linn agreement having much greater detail primarily describing what must happen in the event of termination. This greater detail is designed to ensure that investments in facilities are properly recognized, that all parties are dealt with fairly, that the states assets are handled in accordance with law and that there is minimal interruption to the provision of fire protection services on the district.

Development was completed in April, 2009. Following signature by Michele Logan, signifying legal sufficiency, State Forester Marvin Brown signed the Clackamas-Marion agreement on April 6, 2009 followed by Clackamas-Marion Forest Protective Association President, Dan Fink on April 8, 2009. At the time of this writing, the Linn agreement was still in final review, but is anticipated to be completed in essentially similar fashion to Attachment 4 by the time of the Board's meeting on June 3.

RECOMMENDATION

The Department recommends the Board take the following action when it meets on June 3, 2009:

Confirm that the forestland protection agreements recently negotiated by the State Forester and the Clackamas-Marion, and Linn Forest Protective Associations adhere to the

requirements of statute and rule as required by OAR 629-041-0100.

NEXT STEPS

This action will complete the process for these two agreements, and they are each effective on the date last signed unless the Board determines that they do not conform to statute and rule or otherwise takes issue with the agreements. The department will soon engage some or all of the remaining seven associations by requesting that they enter into negotiations to update their forestland protection agreements similar to the appropriate templates. As negotiations are completed, the department will return with additional agreements for the Board's review.

ATTACHMENTS

Attachment 1: ORS 477.406

Attachment 2: OAR 629-041-0100

Attachment 3: Forestland Protection Agreement – Clackamas-Marion FPA

Attachment 4: Forestland Protection Agreement – Linn FPA