



Flathead National Forest

SPECIAL USES PROPOSAL, APPLICATION **and AUTHORIZATION PROCESS**

What are Special Use Authorizations?

A special use authorization is a legal document such as a permit, term permit, lease, or easement, which allows occupancy, use, rights, or privileges on National Forest System (NFS) land. The authorization is granted for a specific use of the land for a specific period of time.

When do I need an authorization?

1. If you will need to occupy, use, or build on NFS lands for personal or business purposes, whether the duration is temporary or long term.
2. If there is a fee being charged or if income is derived from the use.
3. If non-commercial activity on NFS land involves individuals or organization with 75 or more participants or spectators.

Background Information

With very few exceptions, all uses on National Forest System lands (NFS) involving extended occupancy, improvements, conducting any business activity or the use of resources are designated "special uses" and must be authorized by the Authorized Officer for the administrative unit upon which the use is anticipated. Written special use authorizations document the authority for use of NFS lands for a wide variety of purposes including facilities and services necessary for public health, welfare, safety and convenience. Special use authorizations are also issued to approve commercial activities, recreational events, certain types of filming or still photography and uses of a private nature. Title 36, Code of Federal Regulations, Subpart B contain the principal rules for screening special use proposals, filing and processing special use applications, and preparing written authorizations.

Requests for authorizations to occupy and/or use NFS and related waters that are initiated by entities other than the Forest Service are referred to as **unsolicited proposals**. The person or persons making a proposal are referred to as the **proponent**. The Forest Service is required to conduct an initial and a second-level screening process established in 36 CFR 251.54(e) before accepting a proposal as a formal **special use application**. A decision in favor of a proposed use generally results in a **Special Use Authorization** being issued in the form of a permit, easement or lease to the proponent. Unless specifically prohibited, individuals, business entities, corporations, partnerships, associations, municipalities, or agencies of local, State, or Federal governments may hold a Special Use Authorization.

How do I Apply?

1. Contact a Forest Service Office and request an application or download the application posted here on the website.
2. Prior to submitting the proposal, you are required to arrange a pre-application meeting at the local Forest Service office where the use is being requested. A staff member will discuss your proposal, potential land use conflicts, application procedures and qualifications, probable time frames, fees, bonding requirements, additional coordination with other agencies, environmental reports, and field reviews.
3. Most commercial uses require additional information with the application. You may need business plans, operating plans, liability insurance, licenses/registrations, or other documents. A commercial use is when an applicant intends to make use of NFS lands for business or financial gain.
4. Complete and submit the application form, including supporting documents, to the local Forest Service office. An incomplete proposal could delay the processing.

How do I answer the Questions on the Permit Application?

Name and Address- Include the full name(s) to be used. If the application includes real property, the name(s) on the legal document must match the applicant.

Applicant's Agent- This person must be at least 21 years old and may or may not be the same as the applicant. Documentation should be included to verify that this person may sign for applicant.

Project Description – Include enough detail to enable the Forest Service to determine feasibility, environmental impacts, benefits to the public, the safety of the request, lands to be occupied or used, and compliance with applicable laws and regulations.

Environmental Protection Plan – Include proposed plans for environmental protections and rehabilitation during construction, maintenance, removal, and reclamation of the land.

Map – Provide a detailed map. (U.S. Geological Survey quadrangle or equivalent) or plat (survey or equivalent) showing the requested use in relation to NFS land, identification of applicant's property (if applicable), scale, map legend, legal description, and a north arrow.

Technical and Financial Capability – Provide documentation to assure the Forest Service you are capable of constructing, operating, maintaining, removing the use of NFS land, and reclaiming the land after the authorization terminates.

Alternatives- Regulations require proof that use cannot be accommodated on private land (non-federal). You must first consider using nonfederal land. Lower costs or fewer restrictions are not

adequate reasons for use of NFS lands. Provide alternative locations for the proposal in your application.

What does an authorization cost?

Cost Recovery Fees – An assessment of fees to recover agency costs for processing special use applications and monitoring costs for special use authorizations. Cost Recover fees include costs to conduct work associated with analyzing and processing proposals and for any monitoring of construction or reconstruction activities authorized by a Special Use Authorization. Cost Recovery regulations stipulate that a proponent is subject to non-refundable Cost Recovery fees as soon as the Forest Service formally accepts a special uses application. Cost Recovery fees can vary greatly depending on the complexity of the proposal and are separate from any fees charged for the use and occupancy of NFS lands. An example of a simple request could be teaching a class in a developed site for 1 day. An example of a complex request could be expansion of a resort.

Land Use Fees – This is an annual rental fee based on the fair market value for the uses authorized and is payable in advance. Fees are established by appraisal or other sound business management principals. The minimum land use fee in Region 1 for 2012 is \$69.00.

Other Associated Costs – You may be responsible for providing information and reports necessary to determine the feasibility and environmental impacts of your proposal; compliance with applicable laws and regulations; and terms and conditions to be included in the authorization.

Requirements for a Proposal to be Accepted as an Application

Any proposal is subject to the following conditions before being fully considered or accepted:

1. The proposal application must pass the initial nine criteria in the First Screen and then five in the Second Screen to be considered a viable application.
2. Preference in processing applications and issuing authorizations is given to uses that offer public services and benefits over private uses.
3. Special application procedures may apply to a particular land use, activity or administrative unit.
4. Any application that is accepted for a commercial use or activity must involve a competitive interest determination and, if any competitive interest is expressed, the Forest Service is required to issue a prospectus along with a solicitation for bids to conduct the commercial use. The time necessary to prepare a prospectus depends upon the complexity, intensity and location(s) of the activity being proposed, the staff time available, as well as other priorities the Forest may have at the time. This can be a lengthy and time consuming process and the entity submitting the original proposal is in no way guaranteed of being the one selected for an authorization.



Initial Screening of a Proposal

Proposals submitted orally or in writing are initially screened to determine if they qualify for further consideration according to the nine criteria listed below:

1. It is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands (including policy in FSM 2703.1 and 2703.2); other applicable Federal laws; and applicable State and local laws.
2. It is consistent or can be made consistent with standards and guidelines in the applicable Forest land and resource management plan prepared under the National Forest Management Act and 36 CFR 219.
3. It will not create a serious and substantial risk to public health or safety.
4. It will not create an exclusive or perpetual right of use or occupancy.
5. It will not unreasonably conflict or interfere with administrative uses of the Forest Service or with other scheduled or authorized existing uses on or adjacent to National Forest System lands.
6. It does not involve a proponent with an outstanding debt owed to the Forest Service under terms and conditions of a prior or existing authorization.
7. It does not involve gambling or sexually oriented commercial services.
8. It does not involve military or paramilitary training or exercises by private organizations or individuals.
9. It does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

If the proposal fails to meet any of these requirements it will be denied without further consideration. A proposal that passes the initial First Screen outlined above then proceeds to the Second Screen. Any proposal for a commercial activity that might generate a competitive interest is processed in accordance with procedures for proposals with competitive interests as outlined in the Forest Service Manuals & Handbooks.

Passed Screen 1 onto Screen 2

The Forest Service will notify a proponent whose proposal passes initial screening that the proposal is subject to second-level screening. At this stage the Forest Service will:

- a. Provide the proponent guidance and the information necessary to proceed with the approval process, including information concerning potential land use conflicts, processing timeframes, environmental and management concerns, administrative fees, anticipated land use rental, and approvals that must be obtained from other Federal, State, or local agencies; and
- b. Identify whether on-the-ground investigations that may require a temporary use permit are necessary to consider the proposal; and
- c. Discuss the kind of authorization (temporary permit, permit, term permit, lease, or easement) and the general terms and conditions (such as tenure, insurance requirements, bonding, and so forth) that may be applicable to the proposed use; and
- d. State that the proponent is responsible for providing studies or other documentation needed by the authorized officer to complete the environmental analysis process and is also responsible for costs incurred in obtaining that information.



Second-Level Screening of a Proposal

To ensure a thorough second-level screening, a proposal must provide sufficient information about a project or activity to enable the authorized officer to determine its feasibility, location, public benefits, and other factors. The proposal must describe the proposed use in sufficient detail to determine:

1. The proposed use is consistent and compatible with the purposes for which the lands are managed and with other uses;
2. The proposed use is in the public interest.
3. The proponent is not qualified. Or
4. Proponent does not or cannot demonstrate the technical or economic feasibility of the proposed use of the financial or technical capability to undertake and to fully comply with the terms and conditions of the authorization.
5. There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

Additional Information May be Required

1. Other Federal, State, and private lands affected by the proposed use and any other agencies that have licensing or regulatory authority over the proposed use;
2. The resources affected, anticipated improvements, and method of operation when construction is complete;
3. Construction phases and their estimated starting and completion dates.

Application is Accepted or Denied

The Forest Service shall deny any proposal that fails to meet the second-level screening criteria and will return the proposal to the proponent with a written explanation of the denial. The Forest Service may reconsider proposals denied after second-level screening when the deficiencies identified in the screening process have been corrected to the satisfaction of the authorized officer. Denial of unsolicited proposals is not subject to administrative appeal under 36 CFR part 215 or part 251, subpart C, and does not constitute a proposed action pursuant to 36 CFR 251.54(e)(6) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347).

If the second-level screening criteria are met, the Forest Service will notify the proponent that the agency is prepared to accept a written formal application for further evaluation. As appropriate, the Forest Service will provide the proponent with additional guidance and information at this time, including identification of the agency's procedures for processing the application and estimated time requirements.

Application is accepted then the Environmental Analysis Begins

National Environmental Protection Act (NEPA) process

When an unsolicited proposal meets all screening criteria it is accepted as a formal application and is considered a **proposed action** that must be analyzed for its site-specific environmental and social effects in accordance with requirements contained in the National Environmental Policy Act of 1969 (NEPA), its implementing regulations and agency NEPA procedures (FSM 1950, FSH 1909.15).

The NEPA process involves public involvement, internal review, and external review by other agencies. The level of NEPA varies depending on complexity, ground disturbance, unusual circumstances, environmental laws, cumulative effects, threatened and endangered species, social impacts, water quality, invasive species and more. When the NEPA analysis and decision is completed the Forest will know whether or not to authorize the use and under what conditions it will be authorized.

Additional information can be found on the Forest Service's Internet site at:

<http://www.fs.fed.us/specialuses/>

Contact information for Flathead National Forest Administrative Units

Spotted Bear Ranger District	- (406) 758-5376 Summer & (406) 387-3800 Winter
Swan Lake Ranger District	- (406) 837-7500
Tally Lake Ranger District	- (406) 758-5200
Forest Supervisor's Office	- (406) 758-3538
Forest Supervisor's Office	- (406) 758-3538
Hungry Horse - Glacier View Ranger Districts	-(406) 387-3800

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