MANTI-LA SAL NATIONAL FOREST

RECREATION SPECIAL USE PERMITTING PROCESS ON MANTI-LA SAL NF

This policy will become effective immediately. Every applicant who has requested priority and/or temporary use within the past five years as well as all existing permittees will receive a letter describing the new policy. O&G permit applications for 2014 will be accepted and processed as described herein on the application date of November 1, 2013.

Approved By:

Allen Rowley, Forest Supervisor
Manti-La Sal National Forest

5/14/2013
Date

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I. INTRODUCTION

This document is intended for a brief overview of recreation special use permits for the Manti – La Sal National Forest. For the complete guidance on recreation special uses see:

- Outfitter – Guide Administration Guidebook
- FSH 2709.14 –Recreation Special Uses Handbook
- FSM 2721.81 –Recreation Events
- FSM 2721.91 – Noncommercial Group Use
- FSM 2725.51 – Still Photography
- FSM 2725.52 – Commercial Filming

II. REGULATIONS AND REQUIREMENTS

Title 36 of the Code of Federal Regulations (CFR) at 251.50 describes in detail what constitutes a *special use* and under what circumstances a special use authorization is required. A special use authorization is required before conducting any type of commercial recreation use of National Forest System (NFS) lands.

A. PERMIT REQUIREMENTS:

A permit is required when individuals or organizations (including institutional and semi-public O&Gs) are conducting O&G activities on National Forest System (NFS) lands or related waters. O&G services include but are not limited to packing, hunting and fishing trips; raft, canoe, kayak, and boat trips; all-terrain and horse liveries; hiking; ski, jeep, snowmobile, mountain bike and boat tours and rentals; helicopter and cross-country skiing; rock climbing; etc.

O&Gs whose physical business locations are off NFS lands but who rent and deliver equipment or livestock to the public on NFS lands must obtain a special use permit if they, their employees, or agents occupy or use NFS lands or related water in connection with their rental programs. Delivering the public to NFS lands off the road or trail right of way constitutes use of the land.

B. WHEN A PERMIT IS NOT REQUIRED:

A permit is not required if an O&G's customers transport rented equipment or livestock to and from the NFS lands or if an O&G operation serves Forest Service employees, Forest Service contractors, or other Federal officials in the course of their official duties.

Travel on a State Highway or County Road *does not* require a special use permit, *even if* the travel is for engaging in a special use activity such as a *commercial bicycle tour* or *recreation event*. When groups stop traveling and begin to engage in other special use activities such as photography, picnicking, interpretive talks, recreation event staging, etc.; they are no longer using the highways for their intended purpose (travel) and a permit would be required, even if those activities were

within the Right of Way. A permit *is* required for commercial bicycle tours and recreation events that travel on National Forest System roads.

A separate permit is not required when the service is provided for and subordinate to a non-O&G activity such as mineral exploration companies and film production companies. Authorize the O&G activity under the principal use permit. However, where clientele of the O&G are involved in commercial filming of their operation for marketing purposes, allow the use via their existing O&G permit.

Use chart below to determine if and what type of permit is required.

Determination of Need for Special Use Permit Recreation Event, Outfitter & Guide or Group Use
36 CFR 251, FSM 2720, FSH 2709.11

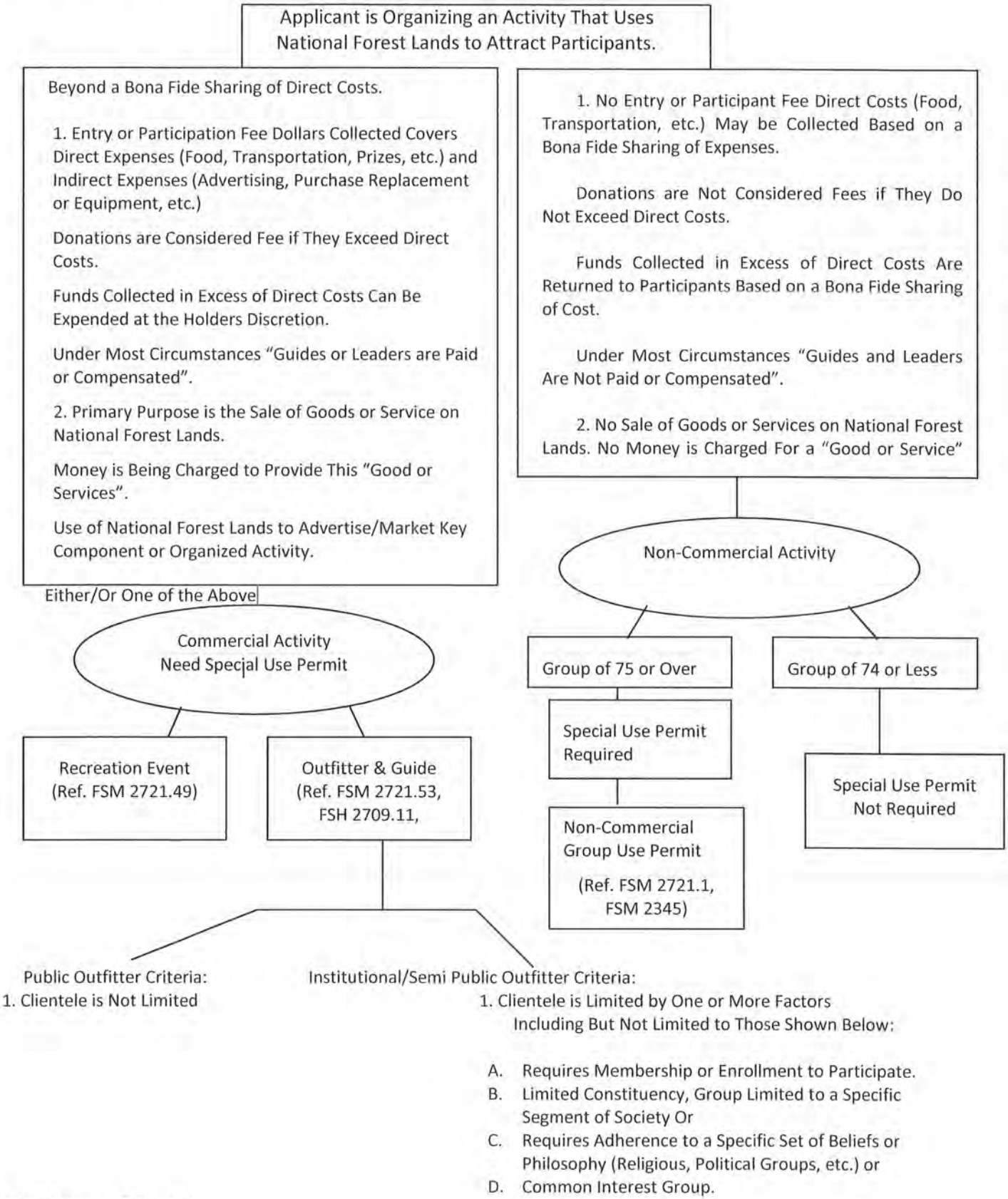


Chart Revised 10/99, DSJ

III. PERMIT TYPES

A. PRIORITY

Authorization of use for up to 10 years based on the holder's past use and performance and application programmatic or project decisions to allocate use. Except as provided in 36 CFR Part 251, Subpart E, authorizations providing for priory use are subject to renewal.

B. TEMPORARY

Short-term, non-renewable outfitting and guiding use that is authorized in increments of 50 service days, up to a maximum of 200 services days in a 180-day period.

C. RECREATION EVENTS

Recreation events are managed under Forest Service Manual and Handbook

Recreation events are commercial activities requiring temporary, authorized use of NFS land. Examples of recreation events include, but are not limited to, animal, bicycle, motocross, or triathlon races; jeep rallies; dog trials; fishing contests; rendezvous; rodeos; adventure games; youth treks; wagon trains; concerts; and other similar events. A permit is required for these types of events, regardless of the number of people involved in the activity.

Applications for Recreation Events would be accepted twice a year on March 1st and November 1st of each year. Applications would then be processed and reviewed by the Districts and either declined or issued permits.

If the recreation event is reoccurring a five-year non-commercial may be issued.

D. EXCEPTIONS

1. EDUCATIONAL/INSTITUTIONAL/UNIVERSITIES

Organized groups associated with educational institutions that are proposing to use National Forest system lands will require a permit and need to contact the individual district where the proposed use would occur.

If the proposed use is part of a field trip associated with a university class where tuition has been paid for the class then fees will not be charged but a permit is still required.

2. NON-COMMERCIAL ORGANIZED GROUPS

All group activities including organizations are encouraged to contact the district where their use will occur to coordinate with the Forest Service and to determine if their use would require a permit. Examples of organizations or groups include those from religious organizations, state, county and local governments, and non-profit organizations (i.e. Boy Scouts of America).

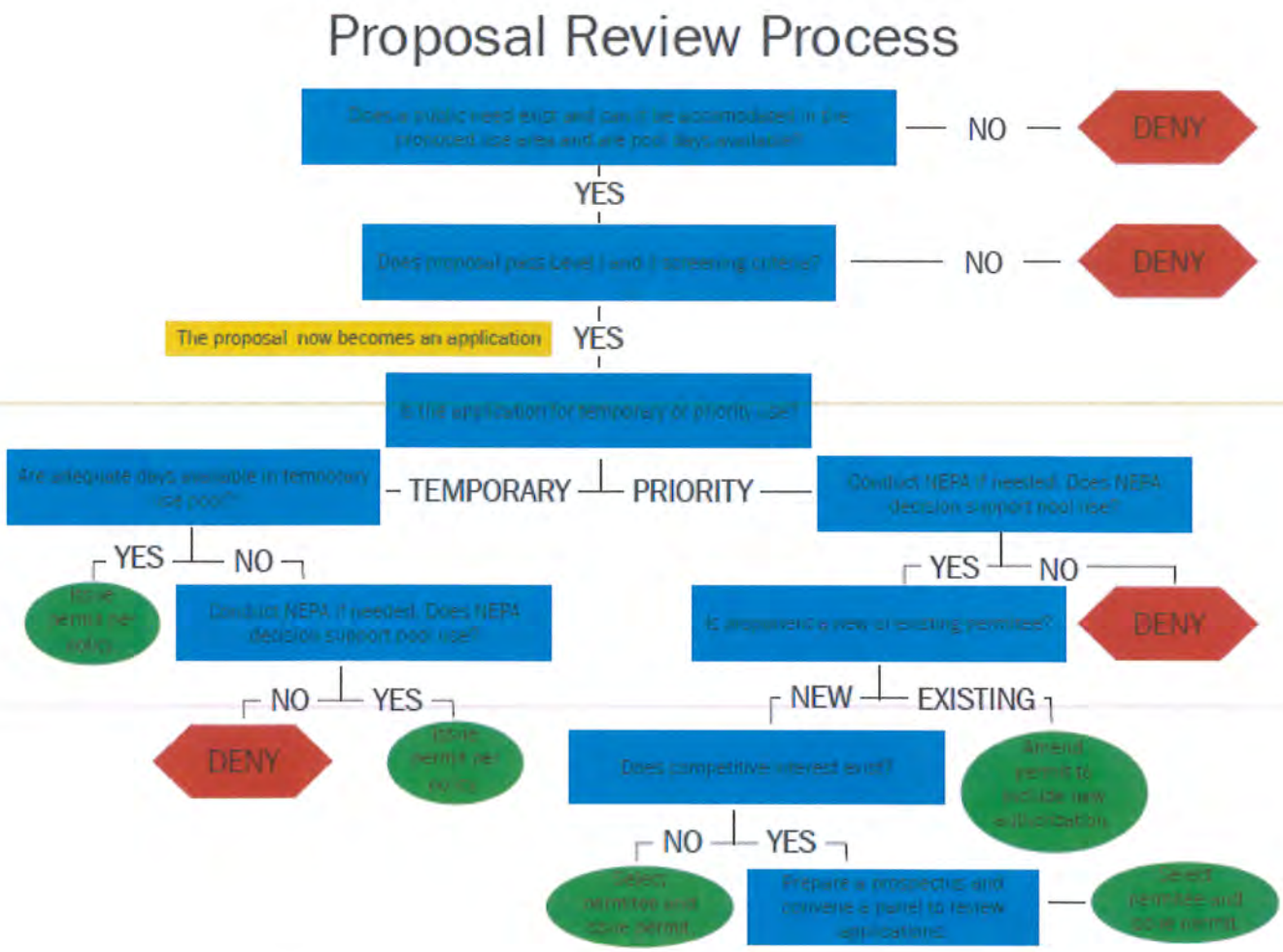
Groups of 75 participants and over must apply for a Non – Commercial Group Use Permit. Groups of less than 75 are still encouraged to coordinate their activities with the Forest Service to ensure that other authorized activities in the area they will be operating will not affect their use.

If a group event/activity is reoccurring, a non-commercial permit may be issued for up to five years.

3. CONSERVATION/GOVERNOR TAGS

As outlined in the agreement between the Utah Forest Supervisors and the State of Utah agreement the Forest will issue a temporary permit for all Governor Tags for the duration of the specific hunt that will not be renewable.

IV. PROPOSAL REVIEW PROCESS TO RECEIVE A PERMIT



The above diagram provides a quick process review to ensure all steps are undertaken to determine whether or not to issue a permit. The results of the needs assessment and the results matrices would be a part of the first two screening questions and levels.

The highlighted yellow portion indicates that until this point the proposal from the proponent is

not an application and these first portions may be completed in a more informal (over the phone, oral, etc.) way if warranted. At this point the proponent must have all their necessary documents returned to the M-LS NF and the more formalized portion of the process begins.

A. OUTFITTER & GUIDING PROPOSAL SUBMISSION DATE

All proposals for new outfitter and guide permits are due on March 1st of each year. This includes new proposals as well as amendments to existing priority, temporary permits. Applications will take at least two months to process.

B. RECREATION EVENT AND NONCOMMERCEAL GROUP USE PROPASAL SUBMITAL DATES

Proposals for recreation event and noncommercial permits with 75 or greater participants are due on March 1st and November 1st of each year. This includes annual operating plans for holders with permit great than one year.

Non-commercial groups with less than 75 participants nee to apply at least 45 days prior to the event date.

C. TRIAL PERIODS FOR NEW PROPONENTS

New Priority Use Permits (for new O&G) would be issued for a two-year period. During and at the conclusion of that period, the O&G would be evaluated to determine that the demonstrated use and receipt of an acceptable evaluation. If those requirements are met, a five-year renewable non-competitive permit will be issued. A proponent who has demonstrated use and received an acceptable evaluation on a temporary permit may also receive a new priority permit.

New Priority Use Permits may be issued when there is a demonstrated public, outfitter or agency need. If the Forest Service determines a need for an activity not currently met by existing O&Gs or if multiple proponents express an interest in conducting the same activity in the same area where limited available days exist, a prospectus may be sent out to solicit proposals. Elements of the prospectus will be evaluated to determine which proposal will be accepted.

All proposals for a Priority Permit require a business plan, which will be sent to the Albuquerque Service Center for a financial viability evaluation.

Any NEPA evaluation requiring 50 hours or more would be assessed cost recovery fees.

36 CFR 251 SPECIAL USES CHECKLIST

Name of Proponent/Proposal:_____
Case Mgr.:_____
Date:_____

Step 1
Meet with the proponent.

Step 2
Proposal submittal (written).

Step 3
Check proposal for required information.
(1) Proponent name/identity.
(2) Nature of proponent - individual, partnership, corporation, gov't. agency, shareholder info.
(3) Technical and financial capability.
(4) Project description.
(5) Additional information.

Step 4
Proposal Triggers Pre-application consideration.

Step 5
Initial Screening.
(1) Use consistent with laws, regulations, orders, policies of NFS lands, other federal laws and applicable with State and local health and sanitation laws.
(2) Use consistent or can be made consistent with FLRMP's.
(3) Use does not pose serious or substantial risk to public health and safety.
(4) Use does not create an exclusive or perpetual right of use or occupancy.
(5) Use does not unreasonably conflict or interfere with administrative use, other scheduled or existing authorized uses or adjacent non-NFS lands.
(6) Proponent does not have a delinquent debt owed to the Forest Service.
(7) Use does not involve gambling or provision of sexually oriented commercial services.
(8) Use does not involve military or paramilitary training/exercises by private organizations or individuals.
(9) Use does not involve disposal of solid waste, radioactive waste or other hazardous substances.

Step 6
Proposal does not meet criteria. Stop further consideration/processing. Advise proponent and return proposal.
Proposal does meet criteria. Provide guidance and information (8 elements), ask for additional information, if needed.
Go to second-level screening.

Step 7
Second-level screening.

(1) Inconsistent or incompatible with purposes for which lands managed or with other uses.
(2) Use not in the public interest.
(3) Proponent not qualified.
(4) Proponent lacks technical or cannot demonstrate technical or economic feasibility or, financial or technical capability to comply with terms and conditions.
(5) No person or entity to sign or be willing to accept responsibility.

Step 8

Proposal fails to meet criteria. Advise proponent in writing, discontinue processing, return proposal.
Proposal does meet criteria. Advise proponent, provide guidance and information, accept as a "formal" application.
Cost recovery fee determination process begins.

Step 9

Application processing
Revaluate proposal, evaluate environmental effects (planning permits are categorically excluded).

Step 10

Authorized officer makes decision.
Application rejected.
Application accepted.
Application accepted with modifications.

36 CFR 251 Special Uses Checklist Name of Proponent/Proposal:_____
Case Mgr:_____
Date:_____

Proposal Review Notes:

Decision Notes:

VI. APPENDIX B: GUIDANCE TO PROSPECTIVE OUTFITTERS

M-LS NF GUIDANCE TO PROSPECTIVE OUTFITTERS

Interested in outfitting in the Manti-La Sal National Forest? The following information is provided to help you. The Manti-La Sal National Forest currently administers approximately 114 permits for recreation uses, including a marina, hunting, climbing, motor biking, mountain biking, wilderness therapy, Snow-kit boarding, shuttle services, summer homes, and others. In some parts of the Manti-La Sal National Forest authorizing additional commercial outfitter and guide permits, would lead to potential overcrowding, conflict with the non-guided public, conflict with existing permitted outfitters, resource impacts and congestion at trailheads. In other areas, there may be an opportunity for additional use if we can show a public need for the services being requested.

Requests for outfitting and guiding permits should be directed to either the Moab Ranger District located at 62 East 100North, P.O. Box 386, Moab, Utah 84532 (435) 259-7155 for activities occurring in Grand and San Juan counties, the Ferron Ranger District located at 115 West Canyon Road, P.O. Box 310, Ferron, Utah 84523 (435) 384-2372 for activities occurring in Emery, Carbon, counties or the Sanpete Ranger District located at 540 North Main Street, Ephraim, Utah 84627 (435) 283-4151 for activities occurring in Sanpete and Juab counties. To initiate the process you must submit a detailed written proposal to the District Ranger. Rangers approve and administer O&G permits, so you will need to apply directly to the district you wish to operate on. If your interest is for more than one district, apply to the one you expect to have the majority of your use on -- we can coordinate with the other Ranger Districts for multidistrict permiting. You're encouraged to call the district office before you submit an application, to find out what the processing time and likelihood of approval is. Some districts have a large backlog of applications on file, and are discouraging further applications.

Proposals must contain sufficient detail to allow the District analyze the request. As a minimum the proposal must include name and address of the proponent; sufficient evidence that the proponent has financial and technical capability to manage the proposed use (a business plan); a detailed description of the project including maps and appropriate resource information; benefits provided to the public; safety issues associated with the proposal; the lands to be used or occupied; compliance with federal, state, and local laws; and any additional information requested by the authorized officer. If you submit a proposal, don't expect it to be approved right away. First we must determine public need, which requires some analysis. If we believe there is a public need for the use you propose, and it is a new use in the area, we will do an environmental analysis (this sometimes includes the needs assessment) and seek public comment on the proposal. Depending on the result of that, we will seek competitive interest. If there is competitive interest, we must prepare a prospectus and allow all interested parties to place bids on the use being offered. If there is no competitive interest, the person who asked for the permit first will usually get it, assuming he/she meets requirements such as demonstrated ability to run a business and financial capability. As you can guess, this process takes some time. Other options for getting into the outfitter-guide business on this forest include finding employment with existing outfitters, who hire guides, wranglers, and others for their operations. Many former guides are now principles of the business for which they were once employees. Also, if an outfitter business is for sale, one can negotiate a purchase price with the selling outfitter and meet with a Forest Service representative to see what the chances are of getting the special use permit that the offered business has used.

Most often, if there are no environmental or management concerns and the original permit is in good standing, a new permit will be issued to the buyer of the outfitting business (provided he/she has financial capability and can demonstrate the ability to run an operation successfully).On September 18, 2008 the Forest Service Special Uses Policy was revised at FSM 2700 and FSH 2709.11. With this revision there were significant changes made with respect to how the Forest Service will issue temporary use permits. There was national recognition that a need existed to make short term permits available primarily for youth groups, educational institutions, and church groups, in particular. A new fee structure was created specifically for temporary use permits, and a new permit form was created in the SUDS database for this type of use (FS-2700-3f).Some of the key points relative to the new temporary use policy are:

- A temporary use pool of service days will be the basis for issuing permits
- The amount of use allocated to a pool will be based on an analysis of public need for services, and a determination that the resources have the capacity to carry this additional use without detrimental environmental or social effects
- NEPA will not be required for responding to individual requests
- Ranger Districts have the latitude to establish policies for responding to requests for temporary use and for issuing permits
- National policy has set sideboards that:
    - only one permit can be issued to an entity each six month period
    - the maximum amount of use that can be issued per permit is 200 service days (or equivalent in quotas)
    - permits will be issued in increments of 50 service days
    - a flat fee of $150 will be charged for each 50 day increment (or 3% of gross revenue if receipts exceed $10,000)

The districts cannot issue an unlimited number of temporary use permits from an administrative standpoint. This policy is limited to proposals for recreation special use permits for outfitting and guiding, and education. This policy does NOT pertain to requests for military training or accredited science based university field trips, even though the same permit form is used. These two groups can usually be accommodated with a minimum of 30 days advanced notice.

VII. APPENDIX C: USFS ROAD PERMITS

WHEN PERMITS ARE REQUIRED FOR USE OF ROADS ON USFS LANDS

Questions often arise about whether a permit is required when a special use is proposed along road systems within the National Forest. Variations on this theme include: (1) activities on State Highways and County Roads with easements that pass through National Forest System (NFS) lands, or (2) activities on roads that are included in our National Forest transportation system.

There are four situations that most commonly bring this issue up: bicycle tour groups riding highways and forest roads, recreation events on roadways, shuttle services, and taxi or transportation services.

When the Forest Service grants an easement or Special Use Permit for a Right of Way it is for the purpose of use and maintenance of the roadway and it conveys certain rights.

The definition of an easement (36 CFR 251.51) is: "a type of special use authorization (usually granted for linear rights-of-way) that is utilized in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and that may be compensable according to its terms." A Right of Way is usually measured from the centerline of the road and is usually of sufficient distance to allow maintenance of the shoulder and run out zones.

State Highways and County Roads that traverse NFS lands are constructed and maintained by those governmental agencies for the purpose of public travel.

A National Forest System road is defined as "A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, County, or other local public road authority (36 CFR 251.51)." National Forest System roads are part of the Forest transportation network and are identified with a road number on general Forest maps and Motor Vehicle Use Maps. These roads are usually maintained by the Forest Service or Forest Service funded contract. Forest Service policy relative to use of NFS roads is addressed in FSM 2719.

VIII. APPENDIX D: SPECIAL USE AUTHORIZATIONS ARE NOT REQUIRED

FSM 2719 - USES FOR WHICH SPECIAL USE AUTHORIZATIONS ARE NOT REQUIRED

Consult with the Office of General Counsel on a case-by-case basis to confirm that a special use authorization is not required for a proposed use in any of the following categories:

Travel on National Forest System roads, unless the travel is for the purpose of engaging in a noncommercial group use, outfitting and guiding, a recreation event, commercial filming, or still photography, as defined in 36 CFR 251.51, for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use, pursuant to 36 CFR 251.110(d), or authorization of that use is required by an order issued under 36 CFR 261.50 or by a regulation issued under 36 CFR 261.70".

36 CFR 251.50 describes the situations and activities that would require a special use permit.

These stipulations apply to all National Forest System lands, even if the use occurs exclusively on National Forest System roads. Examples of activities that would not require a permit include commercial deliveries to private inholdings, or taxi services to private inholdings or trailheads.

Many **commercial bicycle tour** groups travel through Utah or base their operations in Moab for the summer. These groups usually travel through multiple states, in vans carrying bicycles. The groups participate in a wide range of adventure activities and often book trips with permitted outfitters for peripheral activities such as river rafting. Most of their biking is guided by the trip leaders. This type of group is occasionally found biking on State Highways and County Roads through the National Forest, and/or on our National Forest System roads. **Recreation events** also use the full suite of roads available on the National Forest. Travel on a State Highway or County Road *does not* require a special use permit, ***even if*** the travel is for the purpose of engaging in a special use activity such as a **commercial bicycle tour** or **recreation event**. When groups stop traveling and begin to engage in other special use activities such as photography, picnicking, interpretive talks, recreation event staging, etc; they are no longer using the highways for their intended purpose (travel) and a permit would be required, even if those activities are within the Right of Way. A permit **is** required for commercial bicycle tours and recreation events that travel on National Forest System roads.

If a decision is made to issue permits for activities that occur within Rights of Way that include travel on the public roadways, it is recommended that the permits do not cover the actual travel. Rather, permit the other special use activities that will be occurring such as stops for wildlife viewing, picnicking, interpretation, recreation event staging, etc. These are the types of activities that require a permit, not the actual travel within the Right of Way.

Shuttle services can occur in two forms: 1) moving vehicles from place to place, or 2) transporting people from a parking area to an activity area. Shuttling vehicles (for monetary gain) from private land to the National Forest or from one National Forest land location to another is a commercial service that would require a special use permit. This is commonly done for mountain biking. The shuttle operator advertises the service, charges a fee, and operates on a regular schedule.

IX. APPENDIX E: MILITARY ACTIVITY PERMIT

MILITARY ACTIVITY PERMIT: WHEN A PERMIT IS REQUIRED

The "MASTER AGREEMENT (MA) BETWEEN DEPARTMENT OF DEFENSE AND DEPARTMENT OF AGRICULTURE CONCERNING THE USE OF NATIONAL FOREST SYSTEM LANDS FOR MILITARY ACTIVITY" (attached) was signed by the Secretary of Defense, and the Secretary of Agriculture in September 1988 and remains in effect to this day. This document describes the role of each agency when a need is identified by the Department of Defense (DOD) to use National Forest System (NFS) lands for military activities, which typically involves training. There are instances when training is needed that combines topography, climate, and specialized skills which can be found in a National Forest setting that is not available on lands under administration of the DOD. When this occurs the DOD can request use of NFS lands and a special use permit can be issued which authorizes the requested activity.

There may be instances when a permit can be waived, such as:

- The unit books a trip with a permitted outfitter, and,
- The training involves learning skills the outfitter is permitted to provide (riding, packing, snowmobiling, etc.), and,
- There will be no other military specific activity (live fire, air support, peripheral technical operations, etc.), and,
- The activity is within the outfitters use area, and,
- There would be no activity within Wilderness that would affect Wilderness Character, and,
- No waiver of general prohibitions or local regulations would be needed, and,
- The permitted outfitter claims the use days and pays the requisite fees.

Application Requirements

Early notification is requested when a military unit is contemplating some type of training on NFS lands.

With complete application information and availability of resources, a permit can be completed fairly quickly, but it takes coordination of several people and usually involves more than one line officer.

Ideally, requests will be submitted at least 30 days in advance of the planned activity. As a minimum, applications for military activity on NFS lands will include the following information:

- Name of the Unit and branch of the Military requesting use
- Point OF Contact information including name, rank, address, phone number, fax number and Email address (this is who the permit will be issued to)
- A detailed description of the proposed activity along with a daily itinerary
- A map of the requested training area or description of the type of terrain needed
- A description of any special equipment planned to be used

- An aviation plan if air support is requested (will need to coordinate with FS Aviation and Interagency Dispatch Center)
- A statement pertaining to use of live fire of weapons (if live fire is requested, justification will be needed as to why military reserve lands are not suitable, and how public safety will be provided for)
- Notification of local support that will be used for training or guiding along with their contact information

Local Support

As referenced above, the military does not need to obtain a permit if they are merely taking advantage of services of local permitted outfitters that are available to the public at large. No special exemptions will be given to the permitted outfitter though, to compensate the military. If special training or exemptions are needed, the military unit will need to contact the FS to obtain a special military training permit. When applying for a permit, the FS requests identification of local support of anyone that will be providing services on NFS lands. The permit will specify who the local support will be and this will be their permission to provide services. It is unlawful for local trainers to provide services without authorization. There will be no fees assessed against the money collected by local support for their services. Military permits are fee exempt. In most cases local support is provided by permitted outfitters, as they are the industry leaders, however the training unit can use anyone they feel will meet their needs. Military units often develop relationships with select local specialists and use these same individuals regularly.