

**Forest Service Handbook
National Headquarters - Washington Office
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**Forest Service Handbook 2709.12 – Road Rights-Of-Way Grants Handbook
Chapter 20 - Department of Transportation Easements**

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Chapter 20 - Department of Transportation Easements
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21 - Highways on Federal-Aid System

If the project is on the Interstate System, 23 U.S.C. 107(d) specifically authorizes the conveyance to the State of a right to control access to the highway. However, the Forest Service may authorize the Department of Transportation to convey a right to control access on other highways under conditions that ensure adequate protection and utilization of the resources of National Forest System lands.

21.1 - Qualifications for Grant

The following qualifications under Sections 317 and 107(d) of the act must be met before the Federal Highway Administration can issue an easement:

1. The Federal Highway Administration must have determined that the land or interest in land owned by the United States is reasonably necessary for the highway right-of-way.
2. The project must be a part of the Federal-aid system.
3. The Forest Service must have agreed to the appropriation and transfer under conditions that are deemed necessary for the adequate protection and utilization of the National Forest.
4. The Forest Service has not certified to the Federal Highway Administration within 4 months of receiving the application from the Federal Highway Administration that the proposed appropriation of such land is contrary to the public interest or inconsistent with the purposes for which such lands have been reserved.

The Federal Highway Authority has the authority under the act to appropriate the lands and transfer the right-of-way to the State if they have received no reply to the application before the expiration of the 4-month period. Conference and discussion with the State during the formative stages of the project (reconnaissance, P-line survey, environmental analysis, development of the stipulation provisions) reduce the time between receipt and agreement to the application to the minimum. In no event should the 4-month period expire without giving the Federal Highway Administration notice of agreement to or rejection of the application.

21.2 - Form of Documents

21.21 - Easement

The easement format is shown as exhibit 01. The Department of Transportation has agreed to issue deeds in this format for rights-of-way to States or their nominees for highways on the Interstate System or other controlled-access highways and for other Federal-aid highways with the deletion of the access control references.

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Include all of the terms and conditions. These conditions normally apply in every case; any additions or deletions should be unnecessary. Make no changes without the Director of Lands' approval. A discussion of some of the conditions follows:

1. Condition 1. Refer any question on termination of term or terminable special-use permits on lands needed for Federal-aid highway purposes to the Washington Office Lands Staff. The State cannot and shall not take any action to terminate an existing permit issued by the Forest Service. This action is the responsibility of the Forest Service. Whether or not the permittee receives compensation from the State for damages to improvements or for the costs of moving these improvements depends on the kind of permit issued and the conditions stated therein. Some State laws require that the constructing State agency reimburse a permittee for any losses suffered. There is a well-established principle that the United States may not pay for the use of its own lands where such other use is under revocable authorization. The Federal Highway Administration has ruled that Federal funds can participate in any payment for equities in revocable permits only to the extent that State law requires such payment.

2. Condition 4. The described right-of-way to which this paragraph refers is the right-of-way shown on the plats, which are to be attached to the deed. Plainly indicate on the plat the right-of-way limits on either side of the highway centerline and monument them in accordance with stipulation provision number 10 (sec. 21.22, ex. 01). The approved plans referred to are the highway construction plans approved by the Regional Forester. The plans are approved only after a plan-in-hand inspection on the ground. Any additional requirements revealed by the inspection are either incorporated into the plans by the State or included in the written stipulation. The right-of-way plat attached to the deed may be a copy of the construction plan approved by the Regional Forester if it meets the requirements of the State for recording in the public records. Usually, the approved construction plan contains information unrelated to the area that is to be included in the right-of-way grant and, thus, may be an awkward size for recording purposes. When this is the case, request the State to prepare a right-of-way plat for attachment to the deed.

3. Condition 5. The final paragraph of this condition provides for the listing of all construction changes that require Regional Forester approval before taking effect, or for the listing of those changes that do not require approval. If all changes that require approval can be anticipated, use alternate 1 language in the letter of consent (sec. 21.23). If certain changes that do not require Regional Forester approval can be defined, use alternate 2 language. Do not use both. If the Regional Forester wishes to approve all changes before they are made, use neither alternative. In this case the provision shall read:

Provided, that if it is subsequently deemed necessary that the approved plans, specifications, or stipulation be amended or supplemented, the Regional Forester and the Grantee shall approve any amendment or supplement before being placed in effect.

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4. Condition 7. Do not include permanent material sites or maintenance sites outside of the normal right-of-way limits within the appropriation. Such uses are authorized by separate special-use authorizations (FSM 2710).

5. Conditions 9 and 10. The Federal Highway Administration includes an appropriate clause to ensure compliance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252). Do not include such a clause in the letter of consent.

6. Condition 11. When the State no longer needs the land, Section 317(c) of the act requires that it revert to the Secretary of the Department from which appropriated. It is not necessary to include this as a condition in the Regional Forester's letter agreeing to the appropriation and transfer.

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21.21 - Exhibit 01

DEPARTMENT OF TRANSPORTATION HIGHWAY EASEMENT DEED

THIS DEED, made this ____ day of _____, 19__, by and between the UNITED STATES OF AMERICA, acting by and through the Department of Transportation, Federal Highway Administration, hereinafter referred to as the Department, and the _____, hereinafter referred to as the Grantee:

WITNESSETH:

WHEREAS, the Grantee has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C., Section 317 (and Section 107(d))^{1/}), for the right-of-way of a highway over certain land owned by the United States in the State of _____, which is under the jurisdiction of the Department of Agriculture, Forest Service, and

WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966 (80 Stat. 931, 937, Section 6(a)(1)(A)).

WHEREAS, the Federal Highway Administrator, pursuant to delegations of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right-of-way for _____ (Identification of highway) _____; and

WHEREAS, the Department of Agriculture, acting by and through the Forest Service, has agreed to the transfer by the Department of an easement over the land to the Grantee;

NOW THEREFORE, the Department as authorized by law, does hereby grant to the Grantee an easement for a right-of-way for the (construction)^{2/} operation and maintenance of a highway (including control of access thereto from adjoining lands)^{3/} and use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the following described land of the United States within the _____ (National Forest)^{4/} (National Grassland)^{4/} (_____)^{4/}, County of _____, State of _____:

Township _____ Range _____ Meridian _____

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SECTION

SUBDIVISION

(In nonpublic-land-survey States the parcel description shall conform with State practice.)
as shown on the following described plats:

Drawing No.____Date____Number of Sheets_____
marked exhibit A attached hereto and made part hereof.

Subject, however, to the following terms, conditions, and covenants:

1. Outstanding valid claims, if any, existing on the date of this grant, and the Grantee shall obtain such permission as may be necessary on account of any such claims.
2. The Grantee and the Regional Forester shall make determination as to the necessity for archeological and paleontological reconnaissance and salvage within the right-of-way, and such reconnaissance and salvage to the extent determined necessary because of construction of the highway facility, is to be undertaken by the Grantee in compliance with the acts entitled An Act for the Preservation of American Antiquities, approved June 8, 1906 (34 Stat. 225, 16 U.S.C. 432-433), the Archaeological Resources Protection Act of 1979 (93 Stat. 721, 16 U.S.C. 470aa-470ll), and State laws where applicable.
3. 5/ Unless the Grantee and Regional Forester stipulate as to a shorter time, the easement herein granted shall terminate ten (10) years from the date of the execution of this deed by the United States of America in the event construction of a highway on the right-of-way is not started during such ten-year-period.
4. The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of (construction)2/ operation and maintenance of a highway (in accordance with the approved plans described in the following condition number 5)2/ and does not include the grant of any rights for nonhighway purposes or facilities: Provided, That the right of the Forest Service to use or authorize the use of any portion of the right-of-way for nonhighway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and, in any case, the Grantee and the Federal Highway Administration shall be

21.21 - Exhibit 01--Continued

consulted prior to the exercise of such rights; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of construction clearing limits, (except that such signs shall not be located on the right-of-way of an Interstate System)1/.

5. 6/The design and construction of highway project(s) situated on this right-of-way will be in accordance with the provisions of Title 23, United States Code--Highways, and amendments; the Regulations for the Administration of Federal Aid for Highways, effective May 11, 1960; and amendments and established procedures for Federal-aid projects, including the requirements of Title 23, Code of Federal Regulations, part 771, and the construction specifications of the State highway department as approved by the Federal Highway Administration for use on Federal-aid projects.

The Regional Forester will be provided an opportunity to review plans relative to effects, if any, that the project works as planned will have upon adequate protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of the Forest Service for the purposes for which such land is being administered. Those features of design, construction, and maintenance of the highway facility and of use of the right-of-way that would have effect on the protection and utilization of the land under the administration of the Forest Service are to be mutually agreed upon by the Regional Forester and the Grantee by conference or other communication during the preparation of the plans and specifications for each construction project, and the plans shall be revised, modified, or supplemented to meet the approval of the Regional Forester, or when deemed appropriate, supplemented by written stipulation between the Regional Forester and the Grantee, prior to the start of construction.

The final design and the construction specifications for any highway construction project on the right-of-way will be presented to the Regional Forester for approval; construction shall not begin until such approval is given: Provided, That if it is subsequently deemed necessary that the approved plans, specifications, or stipulation be amended or supplemented, any amendment or supplement (which affects alignment, subgrade, etc.)7/ shall be approved by the Regional Forester and the Grantee before being placed in effect (EXCEPT those changes affecting . . .)8/.

6. Consistent with highway safety standards, the Grantee shall:

21.21 - Exhibit 01--Continued

- a. Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - b. Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Regional Forester and the Grantee prior to completion of the highway and the Grantee shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
7. The Grantee shall establish no borrow, sand, or gravel pits; stone quarries, permanent storage areas; sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way; unless shown on approved construction plans, without first obtaining approval of the Regional Forester.
 8. The Grantee shall maintain the right-of-way clearing by means of chemicals only after consultation with the Regional Forester. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.
 9. and 10. (The Federal Highway Administration will include appropriate clauses to ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252)).
 11. When need for the easement herein granted no longer exists, the Grantee shall give notice of that fact to the Secretary of Transportation and the rights herein granted shall terminate and the land shall revert immediately to the full control of the Department of Agriculture.

IN WITNESS WHEREOF, I, _____, Assistant Chief Counsel, pursuant to delegations of authority from the Secretary of Transportation, the Federal Highway Administrator, and Chief Counsel, Federal Highway Administration, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

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21.21 - Exhibit 01--Continued

I, _____, a Notary Public in and for said County and State, hereby certify that _____, whose name as _____ is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, _____ in _____ capacity as such _____ executed the same voluntarily on this day.

Given under my hand and seal of office this ____ day of _____, 19__.

Notary Public

(SEAL)

My Commission Expires _____.

- 1/ Include where grant is for a highway on the Interstate System.
- 2/ Delete for existing highway.
- 3/ Include where grant is for a highway on the Interstate System or other controlled-access highway.
- 4/ Delete the one that does not apply or insert appropriate reference if neither National Forest nor National Grassland.
- 5/ Delete Clause 3 when easement is for an existing highway.
- 6/ Delete Clause 5 in its entirety when Clause 4 of the deed has been modified to provide for only the operation and maintenance of an existing highway.
- 7/ Include all items that require prior approval by Regional Forester.
- 8/ Include any anticipated changes in design or specifications that do not require approval of Regional Forester (sec. 21.21, Item 3, Condition 5).

21.22 - Stipulation

Use the format shown in exhibit 1. Condition Number 5 of the Easement Deed provides for entering into a written stipulation with the State before the start of construction. The stipulation is intended to cover general construction requirements, specific individual project needs, and such items as essential access points, and relocation of structures or other improvements affected by the proposed highway project. These points require prior agreement between the Regional Forester and the State, but their inclusion as conditions in the Highway Easement Deed would clutter the transfer document unnecessarily.

Note that it is most desirable, through early coordination and planning of the highway project, to incorporate as many provisions as possible into the construction plans. This limits the stipulation to the minimum number of provisions needed to provide for those items that the final plan-in-hand inspection, before the granting of consent, shows have not been included in the construction plans for the Regional Forester's approval. Include in the stipulation to be executed by the State only those provisions that apply to the particular project and that have not been provided for adequately in the approved construction plans. Use certain provisions as printed and others with minor additions or modification to suit the particular project. Occasionally, the Regional Forester may deem a separate stipulation unnecessary, and it may be omitted. All changes in, or additions to, the provisions must receive the Washington Office, Director of Lands' approval, except as specifically noted.

The sample provisions cover almost every situation. Comments on each of the provisions shown in exhibit 1 follow:

1. Provision 1a. This provision applies to most projects; use it without change.
2. Provision 1b. Use as written whenever there is timber, young growth, or debris disposal within the right-of-way.
3. Provision 1c. The plan prepared under this provision may remove the necessity of including provisions 1d(2) and (3).
4. Provisions 1d(2), (3). In the blank space provided, insert the plan location of the channel change or changes. Expand as necessary to include all channel changes.
5. Provisions 1d(4), (5). Expand as necessary to include all points where slope and channel protection are needed. If already provided for on approved plans, the item may be omitted from the stipulation. This applies in every case where the plans adequately provide for the item. Delete the inapplicable phrase in Item 1d(5).
6. Provision 2. If no live streams are within or affected by the project, eliminate most of the subpara- graphs. Subparagraph h applies to known game crossings. Provide for any streams that develop after construction under the provisions of Condition 8 of the Highway Easement Deed. Complete blank spaces as indicated.

7. Provision 3. This provision applies to most projects.
8. Provision 4. Use this provision when existing highways are to be reconstructed or relocated and the need for certain segments of the former right-of-way for highway purposes is no longer present. The Forest Supervisor shall insist that the Grantee shall restore the abandoned sections to their natural state and revegetated. The Grantee shall incorporate the restoration of the abandoned sections into the construction plans, or prepare separate plans and specifications as an addendum to the stipulation. If the abandoned sections are on National Forest or other lands administered by the Forest Service, located outside the new right-of-way, a supplement or addendum to the plans is necessary.
9. Provision 5. This provision identifies the location of the required access facilities. Supplemental plans and specifications, approved by the Regional Forester, would be an additional requirement under this provision.
10. Provision 6. This provision is similar to Provision 5, except that this provision provides for replacement or repair of existing improvements.
11. Provision 7. Use this provision when applicable, but with reasonable discretion.
12. Provision 8. Specify height of dike, on which side of road it is required, and the stationing where located.
13. Provision 9. Under 9a are listed typical signing requirements in connection with construction of primary and secondary highways, and under 9b typical signing requirements in connection with interstate highways. Direct any questions regarding signing requirements to the Washington Office Engineering Staff.
14. Provision 10. Include this provision in all stipulations unless right-of-way monumentation is shown on the approved construction plans. When the State has a standard marker for permanently monumenting its highway rights-of-way, it can use such marker in its compliance with this provision. The Washington Office Engineering Staff can provide the specifications for a permanent marker when the State does not have such a standard.

For compliance with this provision, the State is not required to establish on the ground section corners that have been computed and plotted only on protraction diagrams and that official surveys have not established on the ground. The Regional Forester may waive the requirement for monumenting right-of-way intersections with section lines that are not property lines, when the purpose would not justify the cost of the work.
15. Provision 11. Always include this provision when any land monument, property corner, or witness marker lies within or near the right-of-way limits.

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21.22 - Exhibit 1

STIPULATION

This Stipulation, made this ___ day of _____, 19__, by and between the _____, hereinafter referred to as the State, and the Forest Service, United States Department of Agriculture, acting herein by and through the Regional Forester, hereinafter referred to as the Regional Forester.

WHEREAS, the State is engaged in the laying out, construction, operation, and maintenance of a public highway designated as (Identification of highway project), which traverses lands of the United States in the State of _____, County of _____, administered by the Forest Service, and

WHEREAS, the State and the Regional Forester desire to cooperate in the development and construction of a highway that will protect adequately and afford adequate utilization of the lands of the United States traversed by the highway for the purposes for which the lands are being administered.

NOW, THEREFORE, supplementary to the terms and conditions of the highway easement deed between the United States, acting through the Department of Transportation, Federal Highway Administration, and the State, the _____ parties hereto agree to carry out the following provisions during the construction stage: (Construction stage is to begin when construction activities commence on lands administered by the Forest Service and end when the Regional Forester and the State mutually agree that any work done thereafter will be considered as maintenance, EXCEPT, that the Regional Forester reserves the right to reinstate the provisions of this stipulation if the State subsequently submits plans for reconstruction or alteration of the highway).

The State shall:

1. Before any clearing of the right-of-way or construction of the highway commences:
 - a. Prepare, in cooperation with the Regional Forester, a fire protection plan that sets forth in detail the fire prevention, presuppression, and suppression measures that will be taken by the Grantee, its employees, contractors, and subcontractors, and their employees in all operations during the construction stage. The fire plan shall be made available to all bidders prior to letting contract and the Grantee shall cause its contractors to comply with all provisions of the fire plan and of all burning permits issued for disposal of flammable materials.

21.22 - Exhibit 1--Continued

- b. Prepare, in cooperation with the Regional Forester, a clearing plan that sets forth in detail the procedures and standards that will apply to (1) all clearing and disposal of merchantable timber and young growth in the right-of-way and (2) debris disposals, including debris removal from all streams. Such plan shall include provision for payment by the Grantee or its contractors for the merchantable timber on lands of the United States to be cut, used, or destroyed in the construction of the highway or in clearing of said right-of-way. Payment for merchantable timber shall be at appraised value as determined by the Regional Forester: Provided, That the Regional Forester may dispose of the merchantable timber to other than the Grantee or its contractors at no stumpage cost to the Grantee or its contractors.
- c. Prepare, in cooperation with the Regional Forester, a landscape and erosion control plan with the objective of protecting, restoring, or enhancing the roadside landscape, protecting soil, and protecting or reestablishing vegetative cover. Such plan shall, when appropriate, provide for vegetating cuts, fills, and other areas damaged as a result of highway construction; maintenance or operation; and for terraces, drainage, waste disposal areas, soil replacement, and other related requirements necessary to achieve the objective.
- d. Prepare, as deemed necessary by the Regional Forester, plans and specifications to be approved by the Regional Forester for: (Plans and specifications so required will become a part of this stipulation.)
 - (1) Prevention of siltation of rivers and streams in connection with gravel washing operations.
 - (2) Mitigating losses to natural fish habitat caused by channel change between Station ____ and Station ____.
 - (3) The channel change between Station ____ and Station ____, showing cross-section dimensions, alignment with established streambed, and proposed measures for prevention of erosion of channel sides and bottom.
 - (4) Slope and channel protection measures between Station ____ and Station ____ for prevention of erosion of streambed and banks affected by the highway construction.

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- (5) Protection from erosion or channel degradation at Station _____ where water is (concentrated into)(discharged from) culvert.
2. Comply with the following recommendations of the State Fish and Game Department and Forest Service for wildlife and fish management:
 - a. Take all necessary precautions to avoid damage to fish habitat and exercise every reasonable precaution to prevent muddying or silting live streams. For the purpose of these stipulations (Names of streams) shall be considered live streams.
 - b. Not deposit material removed from the roadway or channel changes in live streams or into the streams or stream channel where it would be washed away by high stream flows.
 - c. Not haul materials, including logs, brush, and debris by fording live streams, but shall provide temporary bridges or other structures for this purpose.
 - d. Not operate mechanized equipment in live streams, except as may be required to construct bridges, retaining walls, or channel changes as stipulated.
 - e. Not allow oil or greasy substances originating from construction operations to enter or be placed where they may later enter a live stream.
 - f. Comply with provisions of Sections _____ and _____ of the State Fish and Game Code and other applicable statutes relating to pollution prevention or abatement.
 - g. Not remove gravel from the bed of _____, an important spawning stream, during the period from _____ to _____.
 - h. (Post warning signs to motorists)(Erect big game barrier fence)(Install concave reflecting mirrors along shoulder of road) at big game crossings between Station _____ and Station _____.
3. Dispose of waste material resulting from slides during and after construction and surplus material at locations approved by the Forest Supervisor. A plan showing the proposed method of disposal shall be submitted by the Grantee at the time approval is requested.

21.22 - Exhibit 1--Continued

4. Treat sections of existing road, to be abandoned as a result of the proposed new construction, as designated by the Forest Supervisor, to restore them to their natural state. The necessary treatment shall be determined during a joint review between the Forest Service and the State and may include ripping of roadbed, removal of drainage structure, and opening drainage channels. Plans and specifications as mutually deemed appropriate to accomplish the objective shall become a part of this stipulation.

5. Build suitable access structures, grade separations, and/or connecting roads to standards that conform with the approved plans and specifications at the following locations:

(Specify all points of access, grade separation, connecting roads, and locations necessary to provide access to or across the highway from:

- (1) Any existing or planned National Forest development (or other Forest Service controlled road) intersected or blocked by the right-of-way and
- (2) Any existing improvement or development of the United States or its permittees, such as campgrounds and picnic grounds, summer homes, hotels and resorts, and Government stations.)

6. Repair or replace buildings, roads, trails, or other United States-owned improvements that are damaged or destroyed in the exercise of the rights granted herein at locations designated by and in accordance with plans and specifications approved by the Regional Forester as follows:

(List each building or improvement and describe each road or trail by section and length.)

7. Install locked gates or removable panels in the right-of-way fences with suitable driveways thereto at locations requested by the Regional Forester to provide access for firefighting as follows:

(Specify the number and location of gates or panels and necessary driveways and tie in with road specifications and stations.)

8. Provide __ dike of asphaltic concrete or equivalent material to prevent off-roadway parking on the __ side, as necessary, from approximate Station ____ to ____.
9. Provide standard highway signs to identify the following locations:

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(The following are sample wordings for various signing situations and are not intended to limit the signing to only these situations.)

a. Primary and Secondary Highways

- (1) Two approach signs for Liberty Point Overlook at approximate Stations _____.
- (2) Cabbage Patch Road at approximate Station _____.
- (3) Two approach signs for large roadside Interpretive Sign "Old Oregon Trail Crossing," one each at Station _____ and Station _____. (This to be used where pulloff lane has been constructed to permit cars to pull off and read sign.)
- (4) Two "Caution - SKIERS" signs, one each at Station _____ and Station _____ for Crystal Mountain Ski Area entrance.
- (5) Caution Signs, "Deer Crossing" at Station _____ and Station _____.
- (6) Two warning signs and pavement cross-hatching for Madison Earthquake Vista point. One each at Station _____ and Station _____ with 4" white lines at right angles to traffic 6" apart between the above stations or the equivalent safety device in the opinion of the State Highway Engineer.

b. Interstate Highways

- (1) Near National Forest boundary at Station _____.
TAHOE NATIONAL FOREST Exist 3, 5, and 7.
- (2) Near National Grassland boundary at Station _____.
BUFFALO GAP NATIONAL GRASSLAND Exit 4.
- (3) At end of the off-ramp for Exit 3, NATIONAL FOREST RANGER STATION 2 miles.
- (4) At end of the off-ramp for Exit 5, NATIONAL FOREST CAMPGROUND 3 miles.

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10. Permanently monument the right-of-way in accordance with State requirements for such right-of-way before completing construction, but

21.22 - Exhibit 1--Continued

in any event, the minimum requirements shall be to place permanent monuments at the intersection of right-of-way with all property lines, section lines, and at intervals of not more than 1,000 feet along the right-of-way limits.

11. Reestablish or restore public land monuments disturbed or destroyed by construction, reconstruction, or maintenance according to instructions of the Bureau of Land Management, Department of the Interior. Other land monuments and property corners or witness markers shall not be damaged, destroyed, or obliterated without the prior permission of the Regional Forester and shall be relocated or reestablished in accordance with standards satisfactory to the Regional Forester.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed on the day and year first above written.

By
Title

Regional Forester
United States Forest Service

21.23 - Letter of Consent

Use the format in exhibit 1. After receiving the signed stipulation from the State when it is required, the Regional Forester shall prepare a letter of consent to the appropriation by the Department of Transportation and transfer of the use of the lands to the State for highway purposes. The consent letter shall set forth the first eight standard terms and conditions to be included in the Highway Easement Deed and shall include a copy of any signed stipulation. The first paragraph shall specify whether the Grantee has requested control of access. Write the letter to either the Regional Federal Highway Administrator or to the State, according to the procedures agreed to in the memorandum of understanding with the State. Send a copy of the letter of consent to the other agency. The Regional Forester must change the last sentence of the letter to authorize right of entry directly when the letter is addressed to the State.

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Chapter 20 - Department of Transportation Easements

Amendment: 2709.12-1994-1

Effective date: June 22, 1994

21.23 - Exhibit 1

Letter of Consent

2730

November 20, 19XX

Mr. D. J. Steele
Regional Federal Highway Administrator
450 Golden Gate Avenue
P.O. Box 36096
San Francisco, California 94102

Dear Mr. Steele:

Application has been made for the appropriation and transfer of lands of the United States within the Plumas National Forest for right-of-way (including control of access)1/ for the reconstruction of State Route 21 (U.S. Highway 40A). The areas applied for are in the SW1/4NW1/4, Sec. 4; NE1/4NE1/4, NW1/4NE1/4, SW1/4NE1/4, Sec. 5; T. 22 N., R. 12 E., M.D.B.&M.: SW1/4SW1/4, Sec. 18; NW1/4NW1/4, SW1/4NW1/4, SE1/4NW1/4, NW1/4SW1/4, NE1/4SW1/4, SE1/4SW1/4, SE1/4SE1/4, Sec. 19; NW1/4SW1/4, SW1/4SW1/4, Sec. 29; NE1/4NW1/4, NW1/4NE1/4, SW1/4NE1/4, SE1/4NE1/4, Sec. 30; NE1/4NE1/4, Sec. 31; NW1/4NW1/4, NE1/4NW1/4, SW1/4NW1/4, Sec. 32; T. 23 N., R. 12 E., M.D.B.&M., as shown on the plat title "State of California, Department of Public Works, Division of Highway," and marked "District II, Plumas County, Route 21, Section E, Sheets 1 and 2, Approved by H.S. Miles, District Engineer, on August 14, 19XX."

We agree to the appropriation and transfer of these lands under the provision of Section(s) (107(d) and)2/ 317 of the Act of August 27, 1958, 72 Stat. (893,)2/ 916; 23 U.S.C. (107(d) and)2/ 317, under the following conditions to be included in the grant of Highway Easement Deed (and upon compliance with the enclosed Stipulation agreed to by the State on November 2, 1964)3/.

(1)

- . (Include here the first eight conditions as
- . they appear in the highway easement deed.
- . When consent is for existing highway,
- . insert only six conditions.)

.

.

(6) or (8)

You may authorize immediate entry under the above terms.

Forest Service Handbook 2709.12 – Road Rights-Of-Way Grants Handbook
Chapter 20 - Department of Transportation Easements
Amendment: 2709.12-1994-1
Effective date: June 22, 1994
21.23 - Exhibit 1—Continued

Sincerely,

JOHN W. JONES
Regional Forester

By _____
Acting

Enclosure

- _____
1/ Include when grant is for interstate highway or other controlled-access highway.
2/ Include when grant is for interstate highway.
3/ Include when stipulations are required.

21.3 - Procedure for Issuance

No special form of application is provided or necessary to initiate the appropriation and transfer of the required right-of-way to the State. The State Highway Department submits its request by letter to the Federal Highway Administration Division Engineer. The State Highway Department is required by 23 CFR 712.503 to include with the request a complete set of maps showing the final location of the highway construction project and a description of the lands to be occupied by the desired right-of-way and a complete legal description.

The Division Engineer must determine whether the lands are reasonably necessary for the right-of-way of the highway project if the Engineer has been delegated the authority to make such a determination. Otherwise, the Engineer shall forward the State's application to the Regional Federal Highway Administrator for this determination.

In either case, upon approval of the State's request by the Regional Federal Highway Administrator, the Administrator forwards the application to the Regional Forester for approval and agreement to the appropriation.

By this time, certain preliminary studies, a review of the State's construction plans and specifications, and participation in the preparation of the EA or EIS for the entire project by the Forest Supervisor should have taken place already. Also, the right-of-way limits should have been determined and approved. The width should be sufficient to permit construction, operation, and maintenance of the highway in a safe and efficient manner. There is no standard width. Right-of-way limits may extend a short distance beyond construction or clearing limits, but they are not intended to include areas for scenic easements. The Forest Service shall control the use of scenic strips adjacent to the highway right-of-way in accordance with management plans for the area. A right-of-way strip of uniform width lends itself more readily to monumentation and administration, and therefore, a uniform width may be appropriate for the major portion of a project. When land uses are highly competitive, it may be necessary for the Forest Service to request the State to change an application for uniform width to one of variable width. Except for unusual circumstances, the side-lines of a variable width right-of-way should parallel the centerline and extend a minimum of 250 feet before changing width from centerline.

Upon final review of the highway plans and specifications, the preparation of a site specific environmental assessment, and a determination that National Forest interests are protected adequately by specific design features of the highway project plans or are covered by the selected provisions to be included in the stipulation, the Regional Forester approves the plans, prepares the final draft stipulation, and submits it to the State for execution.

21.4 - Nondiscrimination in Federally Assisted Programs

The granting of a right-of-way by the Department of Transportation to a State road agency without charge constitutes Federal financial assistance to a primary recipient who shall extend the assistance to the public using the road. Because the Federal Highway Administration

prepares and issues the Highway Easement Deed, it is responsible for including an appropriate clause or clauses in the deed to ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4). No reference to the requirements of the Civil Rights Act is necessary in the letter of consent.

22 - Highways Constructed Under Provisions of Chapter 2 of the Federal Highway Act

Forest highways and public lands highways to be constructed under the provisions of Chapter 2, Title 23 U.S.C. are the principal highways of concern to the Forest Service.

22.1 - Forest Highways

22.11 - State Constructs and Maintains

Whenever a State applies for a right-of-way for a forest highway project, follow the same procedures as in the case of other highways within the Federal-aid system (sec. 21). Usually, but not always, the Federal Highway Administration has completed the survey and design of a forest highway before entering into a construction contract with the State. Thus, the Regional Forester and the Federal Highway Administration have agreed to the location and design features necessary to protect, develop, and manage the National Forest resources at the time of receipt of the State's request for a right-of-way.

22.12 - State Operates and Maintains Existing Highway

Maintenance of forest highways is normally the responsibility of the State. The State may assume maintenance of a forest highway without any formal transfer of a right-of-way to the State by permit or easement. However, the law in most States requires highway departments to obtain grants of rights-of-way for any highways they maintain. Encourage State highway departments to make application for rights-of-way even though State statutes may not require it. Whenever a State applies for a permanent right-of-way for a forest highway, approve the grant of a highway easement deed. Special-use permits are not appropriate.

In those cases where the Forest Service has completed and accepted the construction of the highway project, there is no requirement for the State to execute a stipulation. The highway easement deed provisions for such a road are somewhat different from those required when the State is constructing a new highway on the right-of-way. The form and conditions of the easement grant for an existing road are as shown in section 21.21, exhibit 1, with the appropriate modifications.

22.13 - Procedure for Issuance

Follow the procedures provided under section 21.3 with the following exception:

When the application is for a right-of-way for a highway that has already been constructed and there are no plans for immediate reconstruction, there are no required provisions for review and approval of construction plans and specifications, nor are there required stipulations. A plat and

description that identify the lands occupied by the highway and that show the limits of the right-of-way with appropriate ties to permanent land monuments are necessary with each application for grants of right-of-way for existing highways.

22.2 - Public Lands Highways

Follow the procedures in section 21 for other Federal-aid highways.

24 - Highways Across Former Land Utilization Lands Under Contract of Sale

24.1 - Qualifications for Grant

Qualifications for the grant of an easement are the same as shown under section 21.1, except that these qualifications require the consent of the State agency that executed the sale agreement. To satisfy this requirement, have the State agency execute an amendment to the agreement of sale signifying such consent. The Regional Forester may request the appropriate language from the Washington Office.

24.2 - Form of Grant

24.21 - Easement

Easements granted across these lands will be in the format shown in section 21.21, exhibit 1, depending on the classification of the highway constructed or to be constructed upon the right-of-way.

25 - Replacement of Prior Grants

In the past, some States have constructed highways on rights-of-way covered by special-use permits. Upon the request of the State, replace the permit with an appropriate easement under the provisions of 23 U.S.C. 107(d) and 317.

25.1 - Qualifications for Grant

If the highway is located on the Federal-aid system or has been constructed under the provisions of Chapter 2 of the Highway Act, the State may apply for a Department of Transportation grant. No other form of right-of-way is appropriate.

25.2 - Form of Easement

Grant the easement in the format shown in section 21.21, exhibit 1, with appropriate modifications.

25.3 - Procedure for Issuance

Process applications for rights-of-way grants to replace special-use permits in the same manner as rights-of-way requested under section 22.12. Limit approved widths to what is sufficient for operating and maintaining the existing highway; widths need not be the same as authorized previously by the special-use permit.