

**Forest Service Manual
National Headquarters - Washington Office
Washington, DC**

Forest Service Manual 5400 – Landownership

Chapter 5480 – Condemnation

Amendment: 5400-2003-10

Effective date: July 31, 2003

Duration: This amendment is effective until superseded or removed.

Superseded Directive: 5480, Amendment 5400-90-1, 06/01/1990; 5470, Amendment 5400-2003-9

Approved by: Susan M. Super, Acting Service-wide Directive Manager

Date approved: July 17, 2003

Responsible Staff:

Posting Instructions: Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 5400-2003-9 to 5470.

Digest:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

5480: This is a technical amendment that converts the format and style of this chapter (previously in “Applixware”) to the new FSM template using the agency’s current corporate word processing software. Where chapters were previously organized into more than one document, they are now merged into one chapter whenever possible.

Although some minor typographical and technical errors have been corrected, this amendment contains no changes to the substantive direction in this chapter.

Table of Contents

5480.1 - Authority.....	3
5480.11 - Acquisition Authorities.....	3
5480.11a - Tracts of Land in Fee.....	3
5480.11b - Road and Trail Easements.....	3
5480.11c - Conservation Easements.....	3
5480.12 - Condemnation Acts.....	3
5480.12a - Act of August 1, 1888.....	3
5480.12b - Act of February 26, 1931.....	3
5480.2 - Objective.....	4
5480.3 - Policy	4
5480.4 - Responsibility	4
5480.41 - Secretary of Agriculture	4
5480.42 - Chief, Forest Service.....	5
5480.43 - Regional Forester	5
5480.44 - Forest Supervisor	5
5481 - Condemnation Procedures	6

There are two types of condemnation (eminent domain) authorities. The first authorizes the acquisition of the property, and the second establishes the procedures for the acquisition.

5480.1 - Authority

The Federal Government is endowed with the power to take property for public use without the owner's consent. However, the Constitution of the United States contains limitations upon this power and requires that the owner whose property is taken receive just compensation. Also, any taking of private property must be pursuant to and in accordance with legislative authority.

5480.11 - Acquisition Authorities

Generally, acquisition authorities for Federal agencies do not limit the right to exercise the power of eminent domain, unless the particular act specifically prohibits or restricts condemnation. Check each act to determine if condemnation restrictions exist.

5480.11a - Tracts of Land in Fee

See FSM 5420 for acts authorizing acquisition of lands.

5480.11b - Road and Trail Easements

See FSM 5460 for acts authorizing the acquisition of road and trail easements.

5480.11c - Conservation Easements

See FSM 5420 and FSM 5440 for acts relating to the acquisition of conservation easements.

5480.12 - Condemnation Acts

5480.12a - Act of August 1, 1888

(25 Stat. 357, 40 U.S.C. 257). This act authorizes condemnation of property for public use and establishes appropriate legal procedures for determining just compensation. However, the Government may acquire property by condemnation only where such acquisition is otherwise authorized by an enabling statute specifically authorizing acquisition of land such as the Weeks Law or Federal Highway Act.

5480.12b - Act of February 26, 1931

(46 Stat. 1421, 40 U.S.C. 258a). This act is commonly referred to as the Declaration of Taking Act. It provides for the filing of a declaration of taking signed by the Government official empowered by law to acquire the interest in lands described therein and in the complaint. The purpose of the declaration of taking is to vest title immediately in the Government before trial.

The declaration of taking is a supplement for use only in conjunction with filing of the condemnation proceedings. It may be filed with the condemnation proceeding or thereafter at any time prior to an order or judgment vesting title in the United States.

5480.2 - Objective

To acquire real property or interests in property by condemnation when all other methods of acquisition fail and the property or interest is required for the protection, administration, or utilization of National Forest System lands.

5480.3 - Policy

1. Tracts of Land in Fee and Partial Interest Other Than Road and Trail Rights of Way. Normally, do not use condemnation to acquire lands or interests in lands except to clear title. However, if an owner refuses to sell an urgently needed property or interest in property required for a specific purpose or where valuable National Forest resources are threatened, initiate, upon approval by the Chief, negotiations under the threat of condemnation. If negotiations are unsuccessful, recommend condemnation.

2. Road and Trail Easements. Where access across non-Federal land or over a non-Federal road or trail is necessary, make every reasonable effort to obtain a satisfactory easement on equitable terms through negotiations. If it is not possible to obtain such an easement with reasonable promptness, recommend condemnation.

Ensure that the governing consideration in condemnation procedures is procurement of the needed interest in property so that it can be available for use as needed to harvest timber or for other public purposes.

5480.4 - Responsibility

Condemnation is primarily a legal process and much of the responsibility for condemnation action rests with the Office of the General Counsel and the Department of Justice. See FSH 5409.13 for a detailed discussion of the work performed by these two agencies in conjunction with Forest Service responsibilities.

5480.41 - Secretary of Agriculture

The Secretary, Under-Secretary, or a designated Assistant Secretary performs the following functions pertaining to Forest Service condemnations pursuant to 40 U.S.C. 257 and 258a; 7 CFR 2.60:

1. Decides whether or not the Forest Service will initiate condemnation.
2. Requests approval from the appropriations committees to file a declaration of taking for acquisition cases other than rights-of-ways.
3. Signs the declaration of taking if one is utilized.

4. Requests the Department of Justice to institute a condemnation proceeding in the appropriate court.

5480.42 - Chief, Forest Service

The Chief shall:

1. Review the condemnation report and recommendations received from the Region and decide whether to recommend to the Secretary.

2. Approve acceptance or rejection of settlement offers exceeding \$100,000.

3. Upon request from the Department of Justice, recommend for or against the filing of an appeal for all awards.

5480.43 - Regional Forester

The Regional Forester shall:

1. Determine the interest to be acquired and cooperate with the Regional Attorney in defining the estate to be condemned.

2. Ensure the accomplishment of needed coordination between the Forest Service, Regional Attorney and United States Attorney in obtaining adequate appraisals and qualified witnesses.

3. Assist the Forest Supervisor in preparing the condemnation report.

4. Review the condemnation report and accompanying documents prepared by the forest.

5. Submit the case to the Chief with a request for condemnation.

6. Process checks for deposit in the registry of the court to pay the estimated compensation and any deficiency amounts. See FSM 6540 for guidelines. Regional Foresters may delegate this responsibility to the Forest Supervisors.

7. Secure an update of the appraisal to the date of filing or other date as determined by the Court.

8. On behalf of the Forest Service, approve compromise settlement offers submitted by the United States Attorney when such approval is within the Regional Forester's authority (FSH 5409.13).

5480.44 - Forest Supervisor

The Forest Supervisor shall:

1. Perform all preparatory work necessary to carry out informed negotiations with the landowner.

2. Prepare the condemnation report, description, plat, and other requirements for condemnation.

5481 - Condemnation Procedures

There are two legal procedures under which the Federal Government condemns property. The FSH 5409.13, Land Acquisition, describes the procedures for processing condemnation. The authorized official shall:

1. File a declaration of taking together with an estimate of compensation under the Act of February 26, 1931, along with a complaint, when the Government needs immediate possession or the landowner needs immediate payment.

2. File a complaint without the declaration of taking when there is no immediate need for ownership of the property or payment.