

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

**Forest Service Manual 5400 – Landownership**

**Chapter 5460 – Right-of-Way Acquisition**

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**Superseded Directive:** 5460, Amendment 5400-2003-8, 07/25/2003; 5450, Amendment 5400-2015-1

**Approved by:** Leslie C. Weldon, Deputy Chief, National Forest System

**Date approved:** August 26, 2015

**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 5400-2015-1 to FSM 5450

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

**5460:** Revises and recodes parts of the chapter; incorporates technical changes in some processes; updates reference; adds new definitions; clarifies delegated authorities; removes obsolete codes, captions, and direction; updates and adds new responsibilities, sets forth new direction; and makes grammatical and formatting changes throughout the chapter.

**5465:** Removes obsolete Bureau of Land Management Forest Service Interagency Right-of-Way and Road Use Agreement.

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## **5460.1 - Authority**

### **5460.11 - Statutory Authority**

The following statutory authorities are relevant to acquire access over non-Federal lands.

1. Act of February 26, 1931 (40 U.S.C. 3114). This Act vests title in the United States immediately upon filing of a declaration of taking and depositing with the court the amount of the estimated compensation.
2. Act of August 1, 1888 (40 U.S.C. 3113). This Act, in conjunction with FLPMA, authorizes acquisition of real estate for public use by condemnation. The Act directs the Attorney General, on application of the authorized Forest Service Officer, to begin condemnation proceedings within 30 days from receipt of the application at the Department of Justice.
3. Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701, et seq.). This Act is the primary authority for the Forest Service to acquire and grant easements. The Act authorizes the Secretary of Agriculture to acquire access (lands or interest therein) over non-Federal lands to units of the National Forest System (NFS) by purchase, exchange, donation, or eminent domain (see 43 U.S.C. 1715).
4. National Forest Roads and Trails Act of 1964 (FRTA) (16 U.S.C. 532-538). This Act authorizes the acquisition, construction, and maintenance of an adequate system of roads and trails within and near National Forest System lands. The Act authorizes cooperative financing with public and private agencies or individuals, as well as amortization of road costs with purchasers of National Forest timber and other products through agreements, including road right-of-way construction and use agreements.
5. Surface Transportation Assistance Act of 1978, as amended (23 U.S.C. 101(a), 201-205). This Act supersedes the Forest Highway Act of 1958. The Act authorizes appropriations for forest highways and public lands highways. The Act establishes the Federal Lands Highway Program; criteria for forest highways; defines forest roads, forest development roads, and forest development trails; and limits the size of projects performed by Forest Service employees on forest roads.
6. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (42 U.S.C. 4601, et seq.). This Act requires relocation and moving assistance, payment of just compensation, and appropriate notice, when property is conveyed under threat of eminent domain.

### **5460.12 - Regulations**

1. Title 36, Code of Federal Regulations, Part 212, Subpart A (36 CFR 212). These regulations establish requirements for the administration of the Forest Transportation System, including roads, trails, and airfields, and contain provisions for the acquisition of

rights-of-way. Subpart A also requires identification of the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands, and use of a science-based roads analysis at the appropriate scale in determining the minimum road system.

2. Title 49, Code of Federal Regulations, Part 24 (49 CFR 24). The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) (Uniform Act), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

## **5460.2 - Objectives**

Right-of-way acquisition objectives are to:

1. Acquire road and trail right-of-way needed to provide for a transportation system that meets public access and agency management goals. Use Travel Analysis (FSM 7712 and FSH 7709.55, ch. 20) to inform decisions to acquire necessary rights-of-way for the Forest Service transportation system.
2. Cooperate with public road agencies in obtaining mutually satisfactory jurisdictional status for forest roads.
3. Utilize road construction and use agreements with qualified landowners, and other land-administering agencies to develop and operate joint road systems (cost share) to serve both parties access and transportation needs.
4. Maintain right-of-way status records for all National Forest transportation system roads and trails. When records indicate that an existing NFS road or trail lacks a proper right-of-way, the necessary right-of-way must be acquired as soon as practicable.

Refer to FSH 5409.17, chapter 10, Right-of-Way Acquisition Handbook for specific direction about right-of-way acquisition procedures.

### **5460.3 - Policy**

Right-of-way acquisition policies are to:

1. Acquire a right-of-way in perpetuity to accommodate all types of traffic unless the Forest Plan or travel analysis decisions indicate that such full use is not needed.
2. Assist and cooperate with private landowners in acquiring needed right-of-way to develop private land access along with NFS access; provided, such acquisition is needed, and is compatible with NFS management objectives set out in Forest Plans.
3. Acquire sufficient interests in right-of-way needed by the Forest Service that would allow the appropriate public road agency to accept road jurisdiction.
4. Consider the use of temporary agreements, permits, licenses, or road rental agreements for road access across non-Federal property only when a documented Travel Analysis indicates perpetual and multiple-use access is not needed in the foreseeable future.
5. Acquire a right-of-way with the least impact on private and non-Federal lands crossed as long as it is economically and environmentally feasible.
6. Initiate condemnation only when negotiations have failed to secure the needed right-of-way.
7. Comply with the specific right-of-way acquisition procedures in FSH 5409.17, chapter 10, Right-of-Way Acquisition Handbook.
8. Consider all options for maintaining existing and/or historic access routes which may not have a documented or recorded easement grant.

See also FSM 5403 for General Landownership policy.

### **5460.4 - Responsibility**

Refer to FSM 5404 for additional responsibilities beyond those described hereinafter.

#### **5460.41 - Chief**

The Chief reserves the authority to sign all condemnation recommendations sent to the Secretary of Agriculture.

#### **5460.42 - Washington Office, Director of Lands and Realty Management**

The Washington Office, Director of Lands and Realty Management is responsible for approving all modifications to the terms, conditions, or reservations in easement deeds, and road right-of-way construction and use agreements.

## **5460.43 - Regional Forester**

The Regional Forester has the following responsibilities, which may be delegated to:

1. The Regional Director of Lands:
  - a. Executing easements or permits.
  - b. Approving the acquisition of limited and term easements or temporary use authorizations for roads and trails.
  - c. Executing right-of-way reservations in mineralized areas (see FSM 5464.5).
  - d. Authorizing offers or accepting counteroffers up to \$20,000 in excess of the appraised value of an easement, after reviewing the facts in the analysis required by FSH 5409.17, chapter 10, section 14.4, and documenting in writing that the available information, including the risk of litigation, supports such a settlement as reasonable, prudent, and in the public interest.
2. The Regional Lands Directors or Forest Supervisors having a Lands Staff Officer with demonstrated proficiency in right-of-way acquisition has the following responsibilities.
  - a. Contracting for commercial appraisals of right-of-way.
  - b. Approving the form and content (Grantors' names, granting language, pre-approved reservations and conditions, right-of-way description, and plat) of the right-of-way deed before negotiations begin.
  - c. Establishing the offer of just compensation for easements.
  - d. Authorizing offers or accepting counteroffers up to \$5,000 in excess of the appraised value of an easement, after making the analysis required by FSH 5409.17, chapter 10, section 14.4, and documenting in writing that the available information, including the risk of litigation, supports such a settlement as reasonable, prudent, and in the public interest.
  - e. Conducting a preliminary right-of-way title review, including determining owners of title interests.
  - f. Accepting options for a right-of-way.
  - g. Maintenance of the official right-of-way records in the Land Status Record System (LSRS).

## **5460.5 - Definitions**

Access Right. The right to pass over a parcel of land for purposes of ingress to, or egress from another parcel of land.

Arterial Road. An NFS road that provides service to large land areas, and usually connects with other arterial roads, or public highways.

Collector Road. An NFS road that serves smaller areas than an arterial road, and that usually connects arterial roads to local roads, or terminal facilities.

Commercial Haulers. Those utilizing the road to remove a forest product for hire, or with the intent to make a profit. See FSM 7709.59, chapter 31.

Easement. The right to use the real property of another for a specified purpose. The easement is itself a real property interest, but legal title to the underlying land is retained by the Grantor for all other purposes.

Forest Road or Trail. A road or trail wholly or partly within or adjacent to, and serving the NFS that the Forest Service determines is necessary for the protection, administration, and utilization of the NFS, and the use and development of its resources (36 CFR 212.1).

License. Permission to cross land for specified purposes, often revocable at the will of the licensor, and not assignable. A license does not convey an interest in land. It may be non-written or written. If it is written, the license is a permit.

Limited Easement. The right to use the real property of another for a specified purpose, but with explicit limitations on that use. This type of easement typically excludes the right of passage by the public.

Local Road. An NFS road that connects a terminal facility with collector roads, arterial roads, or public highways, and that usually serves a single purpose involving intermittent use.

National Forest System Road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or local public road authority (36 CFR 212.1).

Permit. A written license or warrant issued by a person in authority, empowering the Grantee to do some act not forbidden by law, but not allowable without such authority.

Private Road. A road under private ownership authorized by an easement granted to a private party, or a road that provides access pursuant to a reserved or outstanding right.

Public Road. A road under the jurisdiction of and maintained by a public road authority, and open to public travel (23 U.S.C. 101(a)(21)).

Right-of-Way. This term may refer to either: 1) a right to pass over the land of another for a road, trail, utility line, pipeline, irrigation canal or ditch, or other linear use; or 2) the land over which that right is granted. For purposes of this chapter, the first meaning is intended. The right-of-way may be conveyed by an easement, permit, or other instrument.



Road Rental Agreement. A permit, typically for a specific period of time, by which the road user agrees to pay a use fee to the landowner. When a road rental agreement is contemplated, typically the Forest Service drafts the agreement, and makes the arrangement for the road rental agreement.

Temporary Road or Trail. A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or a forest trail, and that is not included in a forest transportation atlas (36 CFR 212.1).

Term Easement. A recordable right-of-way that expires on a specified date.

See FSH 5409.17, chapter 60, section 60.5 for additional definitions.

## **5461 - Interest to Acquire**

### **5461.1 - Right-of-Way for Roads in the National Forest Transportation System**

#### **5461.11 - Arterial and Collector Roads**

Acquire permanent exclusive easements that allow the Forest Service to control and regulate the use of the road (FSM 7703.3 (2); FSH 7709.59, ch. 20, sec. 21; FSH 5409.17, ch. 10, sec. 14.54), and provide for full multiple-use of the NFS lands served, including access for public users. The acquisition rights must permit the road to be operated as a public highway if transferred to an appropriate public road agency. Permanent exclusive easements, subject to the Secretary's regulations, must always be acquired for arterial and collector roads.

#### **5461.12 - Local Roads**

Acquire permanent and exclusive easements, subject to the Secretary's regulations, that provide for full multiple-use traffic on local roads. Easements limited to a specific purpose (such as harvesting resources, Forest Service administrative access) may be acquired for local roads when the land area served has other adequate multiple-use access, and the intermittent access needed for the specific purpose is not economically, or environmentally feasible over the other available route(s).

A limited easement for a specific purpose may be acquired when:

1. The Forest decision to acquire a limited easement is supported through a Travel Analysis (FSM 7712) and a NEPA process decision.
2. The public has had an opportunity to review and comment on management objectives that would support a limited easement.
3. The Regional Director of Lands has approved the limited easement instrument language.

## **5461.2 - Authorization for Roads That Are Not Part of the National Forest Transportation System**

### **5461.21 - Temporary Roads**

Temporary road construction over non-Federal lands may be considered for access needs when a Travel Analysis and NEPA requirements have been completed, and the decision document indicates that the road will be a temporary facility not needed for future access to NFS lands. The Regional Director of Lands approves the acquisition of temporary use authorizations for roads and trails, including authorizations to construct and use temporary roads.

### **5461.22 - Private Roads**

Existing roads over non-Federal (private) lands may be used for temporary access when a Travel Analysis documents the need for short-term or periodic use of an existing private road not needed for multiple-use access to NFS lands. A permit, limited easement, or road rental agreement may be acquired. The Regional Director of Lands approves the acquisition of term or temporary use authorizations for roads and trails over non-Federal lands.

## **5462 - Right-of-Way Acquisition from Private Landowners**

A right-of-way may be acquired from private landowners through negotiated purchase, exchange, donation, reciprocal arrangement, condemnation, or cooperative agreement.

When acquiring a right-of-way, it is important to recognize and respect the rights and privileges of non-Federal landowners, and to comply with applicable laws, regulations, and fiscal limitations. See FSM 5403.1, 5403.3, and 5460.12. Questions about the propriety of any action may be referred to the Office of the General Counsel (OGC).

Take the following actions in compliance with laws, regulations, and fiscal limitations.

1. Do not discuss easement compensation until the Agency-approved value (just compensation) has been established.
2. Provide the landowner with a written statement of estimated just compensation, and a summary of how the figure was established. State separately the compensation amount for the interest acquired, and the amount for any damages or benefits to the remaining property when appropriate. Do not offer less than the Agency-approved value.
3. Comply with the Uniform Act regulations found at 49 CFR 24.
4. Do not agree to any landowner's demands or conditions that require the United States to do anything, either on or off the right-of-way exceeding Forest Service jurisdiction, or requiring the Agency to expend funds in excess of the amount available in an appropriation, or fund for this expenditure. The Forest Service may agree to construct, replace, or repair facilities within the purchased right-of-way to maintain the usefulness of previously existing facilities, such as irrigation ditches, waterlines, culverts, siphons,

bridges, pipelines, and fences, so long as the agreement is conditioned subject to available funding.

5. Do not accept deeds with provisions that are unrelated to the road or its use, or that interfere with the purposes for which the Forest Service is acquiring the right-of-way (36 CFR 212.9(g)(3)).

6. Do not accept deeds that attempt to make the United States liable for road use by others. The United States cannot indemnify the landowner. The United States cannot assume this responsibility and no agent or employee may commit the United States to such responsibility. The United States may be liable under the Federal Tort Claims Act (28 U.S.C., ch. 171) for injury or damage to any persons or property incidental to, or that may arise during and in consequence of the exercising of its rights under the terms of the deed. Consult OGC for advice and opinion on questions regarding liability and indemnification language in permits, and other agreements.

### **5463 - Condemnation**

Where access across non-Federal land or over a non-Federal road or trail is necessary and advantageous to the Government, make every reasonable effort to negotiate a satisfactory easement on equitable terms. When there is no reasonable way to avoid non-Federal land and the right-of-way cannot be satisfactorily acquired through negotiation, or clear title cannot be conveyed due to title defects, initiate condemnation action. See FSM 5480 and FSH 5409.13, chapter 70, for direction on preparing the report and procedures in initiating and processing condemnation actions.

Do not use condemnation as a threat when negotiating with the landowner; only indicate the Government's need to acquire an easement.

Current legislation requires Congressional approval prior to initiating any condemnation action.

### **5464 - Right-of-Way Involving Unpatented Mining Claims**

#### **5464.1 - Claims Located Before July 23, 1955**

The Multiple Surface Use Act of 1955 (30 U.S.C. 613) requires a claimant to file a verified statement on mining claims located prior to July 23, 1955. Where a verified statement was not filed, the United States has the surface management right, and access may proceed in accordance with FSM 5464.2.

Where a verified statement was filed, but later withdrawn or declared invalid, the United States has the surface management right, and access may proceed in accordance with FSM 5464.2.

Where a verified statement was filed and the validity of the claim was unchallenged, or the challenge was unsuccessful, the United States does not have the surface management right. Obtain an easement for the needed right-of-way.

## **5464.2 - Claims Located After July 23, 1955**

On mining claims located after July 23, 1955, it is not necessary to obtain the claimant's permission to build a road, if it will not endanger or materially interfere with existing prospecting, mining, processing operations, or reasonably related uses. This decision must be based on the facts on a case-by-case basis by the Line Officer.

In the absence of any improvements or mining activity, the road may be placed anywhere on the claim. When there are improvements or evidence of mining activity, obtain the advice of a Mineral Examiner in locating the road.

If it is not possible to predict the locations of mine workings and improvements on incompletely explored mineral properties, consult with the claimant, and Forest Service mining Engineers and Geologists, to select road locations with the least likelihood of interference with the mining operations. While the claimant need not concur with the selected location of the road, wherever possible, work with the claimant to establish a mutually acceptable location.

1. When the review and consultation indicates the road location will not interfere with mining activities, do not seek conveyance of an easement, or other forms of permission from the claimant to cross the claim.
2. When the review and consultation indicates the only feasible road location will interfere with mining activities, or if the claimant has applied for a patent, obtain an easement in the form prescribed by OGC. Process such cases in the manner prescribed for easements across claims on which the United States does not have the right to manage the surface (FSM 5464.1).

## **5464.3 - Interest to Acquire**

Acquire all needed interests where an easement is necessary. Easement clauses permitting interruption or relocation may be appropriate on certain claims. Consult with OGC in developing the easement

## **5464.4 - Easement Compensation**

No payment may be made for an easement, since the United States holds title to the NFS lands covered by a mining claim. Where a Forest Service road will materially interfere with the operation of the claim or will damage improvements, a payment for damages may be appropriate. In such cases, obtain the advice of a Mineral Examiner and, if appropriate, obtain an appraisal.

Timber on mining claims filed on NFS lands is the property of the United States. The claimant may legally use as much timber as necessary to develop and operate the claimed minerals. Do not pay the claimant for timber cut in clearing a right-of-way for Forest Service roads.

When a claimant has applied for patent to a claim with surface rights, place any money received from the sale of timber removed from the claim during construction in a special deposit account, and hold it for final adjudication of the application.

#### **5464.5 - Reservation of Right-of-Way in Mineralized Areas**

Subject to outstanding valid claims, the Forest Service can reserve a road right-of-way across mineralized areas of NFS lands (sec. 507 of the Federal Land Policy and Management Act of 1976).

Right-of-way reservations are appropriate in areas open to mineral entry where there is sufficient interest to anticipate claim filing. Execute and place the reservation in the status files for permanent retention. A copy of the easement deed, map, and cover letter must be sent to the Bureau of Land Management requesting they add the reservation to their permanent records, assign a serial number, and notate the Master Title Plat. A copy of the reservation must also be recorded with the local recording office to provide additional public notice. Make the reservation using the format in exhibit 01.

**5464.5 - Exhibit 01**

**FOREST SERVICE  
RIGHT-OF-WAY RESERVATION**

KNOW ALL MEN BY THESE PRESENTS, that in accordance with section 507 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2781, 43 U.S.C. 1767), the Secretary of Agriculture acting by and through the Forest Service, U.S. Department of Agriculture, does hereby reserve to the Forest Service and its successors in interest, hereinafter called the Agency, a right-of-way to locate, construct, use, maintain, improve, and repair a road over and across the following described real property situated in the County of \_\_\_\_, State of \_\_\_\_, to wit:

The parcel of land to which the above description applies contains \_\_\_\_ acres, more or less.

A plat showing the right-of-way described above is attached hereto as exhibit A and made a part hereof.

The right-of-way herein reserved is for the use of the above-described property for the construction and maintenance of a road by the Agency, its licensees, permittees, agents, and contractors subject to the following terms and conditions:

1. The road constructed under the provisions of this right-of-way must be under the control and jurisdiction of the Agency and the Agency alone must have the right to extend rights and privileges for use of the road to other Government departments and agencies, States, and local subdivisions thereof, and to other users including members of the public.
2. The Agency must have the right to cut timber upon the easement area to the extent necessary for constructing, reconstructing, and maintaining the road. Timber so cut may be sold or otherwise disposed of by the Agency for its benefit.
3. The Regional Forester may terminate this right-of-way reservation or any segment thereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Regional Forester  
Forest Service  
U.S. Department of Agriculture

[This space is for the State specific acknowledgement and notary signature and seal]

## **5465 - Right-of-Way from Public Agencies**

### **5465.1 - Bureau of Land Management**

The Bureau of Land Management (BLM) will not provide a permanent Federal Land Policy Management Act right-of-way reservation to the Forest Service. Accept a BLM form 2800-14, Right-of-Way Grant/Temporary Use Permit, when a right-of-way across land administered by the BLM is needed, or an existing right-of-way authorization terminates.

As needed, Regional Foresters may issue Regional supplements and enter into Memorandums of Understanding with the BLM State offices to address access and travel management needs between the two agencies.

### **5465.2 - Bureau of Indian Affairs**

Easements on Indian lands are governed by the Department of the Interior regulations in 25 CFR 169. Ensure that terms and conditions recommended by the Bureau of Indian Affairs do not purport to commit the United States to payment of damages beyond Forest Service authority.

The procedures for acquiring easements on Indian lands vary. Regional Foresters or Forest Supervisors shall contact tribal authorities to develop suitable procedures, and incorporate these procedures into Regional or Forest supplements.

Obtain title evidence and title approval on an acquired easement, if the Indian lands were transferred from Federal ownership through a trust patent, patent, or other instrument.

### **5465.3 - Other Federal Agencies**

Procedures for obtaining rights-of-way to cross lands administered by other Federal agencies vary from agency to agency. Although Federal agencies are exempt from paying rental fees for use or occupancy of land administered by another Federal agency, cost share and cost recovery may be required.

### **5465.4 - State Agencies**

State-owned lands may be administered by more than one State agency. These agencies may have specific charters and authorities to manage land under their jurisdiction, but usually they are not authorized to operate as a public road agency.

Requirements and procedures vary greatly by State. Obtain assistance from OGC in developing acceptable conveyance documents.

### **5465.5 - Local Governments and Agencies**

Local public road authorities often share common transportation interests with the Forest Service. This usually includes a desire for unrestricted public access to NFS lands.

When common interests exist, follow direction in FSM 7703.4, including appropriate use of forest road agreements (FSH 1509.11, ch. 30, sec. 31.2). Where available, utilize other public agencies to assist with the acquisition of needed right-of-way for public access on roads included in the schedule A of forest road agreements.

### **5466 - Title Approval**

Submit all easements and fee title rights-of-way to OGC for review and approval in accordance with the direction in FSH 5409.17, chapter 20. Approval by OGC is required prior to paying the purchase price; spending funds for construction, improvement, or maintenance; or authorizing use of an existing road.

Temporary permits and other temporary authorizations do not require OGC approval. They require sufficient title evidence to prove ownership and identify the individual with authority to grant the authorization. If there are concerns with the owner's ability to permit the specified use or occupancy, submit the title information to OGC for review.

### **5467 - Road Right-of-Way Construction and Use Agreements**

The use of road right-of-way construction and use agreements commonly referred to as cost share agreements, can be advantageous by providing the parties with a basis for administration of their joint interests. The agreement is not essential for cooperative development and use of a road if the easement exchange or purchase satisfies the entire road needs for joint development in the area, and no other cooperative construction is contemplated. See FSH 5409.17, chapter 60.

#### **5467.02 - Objectives**

In the Cooperative Road Development Program, the objectives are to:

1. Develop, utilize, and maintain a single road system in cooperation with other landowners whenever such a system serves, or can be made to serve, the needs of both the Forest Service and the landowners.
2. Prepare cooperative construction and use arrangements in accordance with 36 CFR 212.9.

#### **5467.03 - Policy**

Where it is mutually advantageous to the Forest Service and private landowner:

1. Enter into new or maintain existing road right-of-way construction and use agreements to develop and maintain access in areas that meet the criteria in FSM 5467.2(3).
2. Cooperatively develop access under the concepts and principles of the Cost Share Program, without entering into a formal cost share agreement when the criteria in FSM 5467.2(4) are met and the landowner qualifies (FSH 2709.12, ch. 30, sec. 35.1).



## **5467.04 - Responsibility**

### **5467.04a - Chief**

The Chief reserves the authority to approve all road right-of-way construction and use agreements and supplements, together with the fact sheets, conveyances, and related permits containing provisions and conditions differing from those in approved formats as set forth in the Forest Service Directives System.

The Chief is responsible for monitoring (FSM 5467.06) and evaluating the overall effectiveness of the Cooperative Road Program in meeting the needs of the Forest Service.

### **5467.04b - Regional Foresters, Regions 1, 4, 5, 6, 8, and 10**

The Regional Foresters in Regions 1, 4, 5, 6, 8, and 10, have the responsibility for executing road right-of-way construction and use agreements and supplements.

The authority to execute supplements to the road right-of-way construction and use agreements may be redelegated to Forest Supervisors provided a Journey-Level Cost Share Specialist has certified the correctness of the supplement, and the Regional Forester has designated those Journey-Level Cost Share Specialists authorization to certify supplements in a Regional supplement to the Manual.

The Regional Foresters are responsible for defining roles and standards for personnel in the Cost Share Program for Engineering, Lands, and Fiscal staffs at the Regional Office, Supervisor Offices, and Ranger Districts.

The Regional Foresters shall ensure that Forest Supervisors, Deputy Forest Supervisors, Forest Lands Staff Officers, and District Rangers attend:

1. National Lands Training for Line Officers and Program Managers. Segments of the session cover rights-of-way acquisition, grants, and cost share principles.
2. Regional Training Sessions. Regions with significant Cost Share Programs must conduct Regional cost share training sessions. Inter-Regional sessions must be held periodically to provide consistency and efficiency in the Cost Share Program.

### **5467.04c - Regional Directors**

As delegated by the Regional Forester, Regional Directors have the responsibility to:

1. Execute all road right-of-way construction and use agreements and supplements, except those delegated to Forest Supervisors through the procedures established in FSM 5467.04b.

2. Negotiate with cooperators all details of road right-of-way construction and use agreements that have not been delegated to Forest Supervisors, and monitor all actions to ensure conformance with national direction.

#### **5467.04d - Forest Supervisors**

It is the responsibility of Forest Supervisors to:

1. Plan and arrange for cooperative access needs, including preliminary discussions with cooperators.
2. Conduct economic analyses, select road locations, prepare survey plats, develop cost estimates, prepare timber inventories, make right-of-way appraisals, conduct land status checks, and assemble other pertinent information.
3. Conduct environmental analyses and prepare the appropriate decision documents.
4. Negotiate all details of the road right-of-way construction and use agreements with the cooperators.
5. Draft supplements and assemble the related instruments. When authorized to sign such instruments, Forest Supervisors are responsible for sending a copy of the completed supplement, fact sheet, and balance sheet to the Regional Forester.

#### **5467.04e - Forest Staff Officers and District Rangers**

Forest Staff Officers and District Rangers are responsible for administration of the unit's Cost Share Program.

#### **5467.04f - Journey-Level Cost Share Specialists**

Journey-Level Cost Share Specialists are responsible for:

1. Preparing the following documents:
  - a. Standard road right-of-way construction and use agreements and supplements.
  - b. Fact sheet including valuation of easements, construction costs, determination of shares, land classification, and share calculations.
  - c. Easements and permits.
  - d. Maintenance agreements and requirements.
  - e. Title packets.
2. Certifying each agreement supplement before signature by a Forest Supervisor. The certification consists of a signed and dated statement on the first page of the supplement,

affirming that it is correct in all respects, and meets the required standards and qualifications, including determination of shares, identification of roads, plans and specifications, construction program costs, tributary area, basis of cost sharing, method of payment, and the management of excess cost balances.

## **5467.05 - Definitions**

The following definitions apply to the terms used in FSM 5467 through 5467.63b.

Agreement. A road right-of-way construction and use agreement.

Supplement. An addendum to a road right-of-way construction and use agreement that sets forth the contractual agreement between the parties on individual road, and shares to be borne by each party.

See FSH 5409.17, chapter 60, section 60.5, for additional definitions for the Road Right-of-Way Construction and Use Agreements (Cost Share) Program.

## **5467.06 - Monitoring and Reviews**

### **5467.06a - Washington Office**

A review of the Cooperative Road Development Program must be conducted every 5 years by a team established by the Deputy Chief.

The review of the Cooperative Road Development Program at a minimum must cover:

1. Conformance with the objectives of the Cost Share Program.
2. Any need to re-assess the program.
3. Any need to change the program.

### **5467.06b - Field Units**

Regional Foresters are encouraged to hold annual Regional cost share meetings to address common problems, issues, and maintain consistency within the program. In addition, Regional Foresters shall:

1. Establish audit and review procedures of the certification program for Journey-Level Cost Share Specialists. The procedures should provide for members of the Regional Lands and or Engineering staffs, or a certified Cost Share Specialist from a different Region, to annually visit each designated Journey-Level Specialist to review results of the audit, and to ensure that needed procedural corrections are made at a minimum. Document the annual visit, and include the recommendations on continuance of the Specialist's designation. The Regional Forester shall revoke the designation of any Specialist with an unacceptable record.

2. Conduct periodic reviews of the forest's management of the Cost Share Program. The review must cover, at a minimum, issues related to consistency and uniformity of the program, risk assessment, personnel turnover, anticipated timber program, and functional roles and responsibilities of the Lands, Engineering, Budget, and Line Officers in the operation and maintenance of the Cost Share Program.
3. Review the Cost Share Program with industry on a regular basis. This review should cover benefits of the program, consistency of the program, training needs, coordination, and effectiveness of the program.
4. Periodically review existing road right-of-way construction and use agreements to determine if the cooperator still meets the criteria listed in FSM 5467.2.

#### **5467.1 - Training Standards for Personnel in Cooperative Road Development Program**

##### **5467.11 - Journey-Level Cost Share Specialist**

A panel selected by the Regional Forester shall review nominations for certification as a Cost Share Specialist, and with the concurrence of the Regional Directors of Lands and Engineering to provide a recommendation to the Regional Forester. The minimum training to qualify for designation as a Journey-Level Cost Share Specialist includes:

1. Six days of formal training in negotiations. The training may include courses provided by the International Right-of-Way Association.
2. Two years of experience as an assistant to a Forest Lands or Engineering Staff Officer. Experience must include tasks related to a substantial Cost Share Program, including negotiations, and the preparation and review of cost share supplements for submission to the Regional Forester.
3. Ten days of training or performance in cost share procedures in the Regional Office or equivalent location.
4. Submission of five consecutive supplements to the Regional Forester, acceptable in all aspects, and containing no consequential technical or mathematical errors.

##### **5467.2 - Joint Development Criteria**

1. Make use of cooperative development and use of roads where it best serves the needs of both the Forest Service and cooperator, is cost effective, and minimizes the mileage of the transportation system network. Use other right-of-way acquisition and granting procedures when cooperative road development and use is not appropriate.
2. Continue existing agreements where advantageous to both parties.
3. New agreements must meet the following criteria:

- a. The proposed cooperator and the Forest Service each owns a significant share of the tributary land and have need for a permanent road system.
  - b. Commercial hauling is the principal long-range anticipated use of the roads by the proposed cooperator. In areas where the State, county, or local taxing authority has established a special land-use or assessment category for commercial timber land, with a penalty for conversion or sale for other purposes, the taxing authority shall have so classified the private lands. This classification is one indication of the long-term management intent.
  - c. Frequent commercial hauling will occur within the proposed agreement area.
  - d. The proposed agreement area includes a network of existing or proposed roads to be jointly developed, used, and maintained.
  - e. The potential cooperator is a major forest landowner.
  - f. Road construction or reconstruction is anticipated or planned (short- or long-term) in the proposed agreement area.
  - g. Easements with acceptable title can be granted by each party.
  - h. Road development and timber harvest within the area are not prohibited or severely restricted by law, regulation, Congressional designation, or the Forest Plan.
  - i. Cooperative business relations between the parties are expected to be positive, cost-effective, and equitable.
4. Cooperative road development and exchange of easements under the Cost Share Program may occur without entering into an agreement, when the landowner meets the qualifications in FSH 2709.12, chapter 30, section 35.1, and when any of the following criteria exists:
- a. The roads are likely to become public roads.
  - b. The area is likely to be subdivided for residential or summer-home-type development. The Forest Service does not manage roads for access to subdivisions.
  - c. Use by either party is likely to be relatively minor, infrequent, or incidental.
  - d. Existing roads or the first roads constructed will substantially meet the needs of the parties.
  - e. Future reconstruction or improvement, if needed, will be of little benefit to one party.
  - f. Few roads in the area are suitable or needed for joint use.

g. Cooperative business relations between the parties are expected to be cost effective and equitable. The parties shall establish a clear, mutual understanding of the long-term maintenance requirements of these easements.

### **5467.3 - Cost Sharing Basis**

The Cooperative Road Program allocates the share of costs (the initial buy-in or capital shares) to the respective parties in proportion to their anticipated use of the road. Anticipated use is determined by the suitable land (acres) owned by each party served by the road segment. See FSH 5409.17, chapter 60, for direction on the process of determining suitable acres, and buy-in shares.

### **5467.4 - Regulating Traffic and Use**

The Forest Service is the road manager, and regulates traffic and use of all cooperatively built roads, including use by the cooperator to the extent that such regulation does not decrease the cooperators reserved or granted rights.

### **5467.5 - Liability Insurance**

Cost share easements allow the cooperator to require commercial haulers to carry liability insurance to cover commercial operations on the cooperative road and right-of-way. Cooperators may exercise this right when it is customary in the area for the type or class of user to carry such insurance. Commercial haulers are those utilizing the road to remove a forest product, or with the intent to make a profit. Haulers of products for personal use are not commercial haulers.

A cooperator intending to require commercial haulers to carry liability insurance shall notify the Forest Service of its intentions, and indicate the amount of insurance that it believes commercial users customarily shall purchase for the use authorized.

The Forest Supervisor shall determine if insurance is customarily required in the area for the authorized use, and the amount of insurance that is usually required for the authorized use. If the Forest Supervisor finds that liability limits normally required are lower than those indicated by the cooperator, jointly review the evidence, and agree on the amount of insurance to require.

After determining that insurance is customary on roads in the area, include clauses in all permits, road use permits (see FSM 7731.17), land stewardship contracts, and timber sales requiring commercial haulers who use the cooperative road to maintain public liability insurance in the specified amounts. The coverage must extend to property damage, bodily injury, or death rising out of the authorized use of the cooperative road. The policy must contain a specific provision or rider to the effect that the policy must not be cancelled, or its provisions changed or deleted before the insurance company gives 30 days written notice to the Forest Supervisor. The commercial hauler shall send an authenticated copy of its insurance policy to the Forest Service immediately upon issuance of the policy.

The amount of insurance coverage listed in prior easements does not prevent the Forest Service from requiring a higher figure. If the amount of insurance customarily required exceeds the maximum amount specified in previous easements, the Forest Service shall require its commercial users to carry the amount customarily required.

#### **5467.6 - Management of Excess Cost Balances**

Most cooperators have several agreements, often on more than one National Forest and sometimes in more than one Region. Use a systematic and coordinated approach in administering the Cost Share Road Program to avoid long-term excess cost balances. When planning and programming for timber sales, and road construction or reconstruction, consider the effect on excess cost balances carried by the parties.

##### **5467.61 - Records and Reporting Requirements**

1. Maintain records at Forest and Regional levels concerning excess cost balances for each agreement and for each cooperator on a commitment and earned basis. The following information is essential for managing excess costs:
  - a. The commitment record is an accounting of the contractual commitments in the supplements that, when fulfilled, will incur or liquidate excess costs of either party. This document, commonly called the "balance sheet," provides information by agreement areas on the excess costs incurred by supplement, and the activities that affect that balance, such as cash payments, transfers between agreements, and supplement amendments; and
  - b. The record of earned excess costs renders an accounting of the excess cost balances of each party as of December 31 of each year on the basis of actual completion.
2. Each Region with cost share agreements must submit to the Washington Office, Director of Lands and Realty Management, by February 15 of each year, the Summary of Excess Cost Balances Report, FS-5400-D, showing the excess cost balance on December 31 of the previous year for each cooperator. See FSH 5409.17, chapter 67, for technical instruction on tracking excess cost data, and for preparing the FS-5400-D report.

##### **5467.62 - Supplements**

Develop supplements to:

1. Reduce current excess cost balances with each cooperator to either zero, or some level consistent with the circumstances under which the imbalances occurred as soon as feasible.
2. Maintain an excess cost balance with each cooperator that fluctuates around zero, or in a range consistent with the size of the Cost Share Program with the cooperator.

3. Ensure that there will be a zero balance when the cost share road system is completed or becomes inactive.

### **5467.63 - Excess Cost Management Plans**

Develop an Excess Cost Management Plan covering the ensuing 3- to 5-year period for balancing excess costs with each cooperator. Transfer only earned excess costs between agreement areas.

#### **5467.63a - Preparation of Excess Cost Management Plans**

The Forest Supervisor shall prepare plans when the area covered by an agreement with a cooperator is limited to the Forest. The Regional Forester shall prepare a plan when the area covered by the agreement with a cooperator extends beyond the boundaries of more than one Forest, but is contained within one Region.

When the area covered by an agreement with a cooperator extends beyond one Region, the Regional Forester in each affected Region shall collaborate on a plan. If an agreement cannot be reached, the Regional Forester shall notify the Washington Office, Director of Lands and Realty Management.

#### **5467.63b - Excess Cost Management Plan Contents**

1. In each Plan, consider the following methods of reducing the excess cost balance:
  - a. Collections, when provided by a supplement, from timber sales using the cost share road system.
  - b. Construction or reconstruction of a cost share road by a timber sale purchaser.
  - c. Construction or reconstruction of a cost shared road with appropriated funds.
  - d. Payment of the Forest Service share from appropriated funds.
  - e. Payment of the party's buy-in share of an existing road as consideration for the easement at the time of the supplement.
2. Comply with the following when applying the methods in the preceding paragraphs 1 (a) to (e) for reducing excess cost balances:
  - a. Do not arbitrarily limit the rate per thousand board feet measure for collections from a timber purchaser. In establishing the rate, consider management needs related to the timber sale. Limit the rate to the cost of a substitute facility, but do not set it below the minimum collection right established in the supplement.
  - b. Take the maximum action possible to remedy an excess cost balance on the unit where the imbalance developed.



- c. Give priority to use of appropriated funds to reduce the excess cost balance where it cannot be reduced by collections, and timber purchaser construction.
- d. Consider in the program planning and budgeting process the need for appropriated funds when the Excess Cost Management Plan indicates no other method of balancing.