

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

**Forest Service Manual 2700 — Special Uses Management
Chapter 20 — Special Uses Administration**

Amendment number: 2700-2023-1

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Duration: This amendment is effective until superseded or removed.

Approved by: Gregory Smith, Associate Deputy Chief, National Forest System

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Responsible Staff: Recreation, Heritage, and Volunteer Resources (RHVR)

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

Section 2721.39: Revises direction to be consistent with current industry terminology for ropeways. Clarifies text and requires mandatory supplemental clauses for ropeways found in FSH 2709.11, chapter 50. Clarifies the distinction between ropeways for winter recreation, non-winter recreation, and non-recreation. Provides information on authorizing authorities, authorization forms, term, and land use fees.

Section 2721.6: Revises direction to be consistent with current industry terminology.

Section 2721.61: Removes the requirement for the Regional Forester's review prior to authorizing facilities valued at over \$1 million at winter sports resorts.

Section 2721.61b: Revises direction for clarity on land use fees.

Section 2721.62: Revises direction to be consistent with current industry terminology for ropeways. Clarifies direction and requires mandatory supplemental clauses for ropeways found in FSH 2709.11, chapter 50. Clarifies the distinction between ropeways for winter recreation, non-winter recreation, and non-recreation. Provides information on authorizing authorities, authorization forms, term, and land use fees.

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Section 2721.63: Revises direction to be consistent with current industry terminology for ropeways. Provides information on authorizing authorities, authorization forms, term, and land use fees. Clarifies text.

Section 2721.64: Provides information on authorizing authorities, authorization forms, term, and land use fees and clarifies direction.

Section 2721.64: Provides information on authorizing authorities, authorization forms, term, and land use fees and clarifies direction.

Section 2727.7: Revises direction to add clarity and better distinguish between recreation ropeways and non-recreation ropeways. Revises direction to be consistent with current industry terminology for ropeways. Clarifies text and requires mandatory supplemental clauses for ropeways found in FSH 2709.11, chapter 50. Clarifies the distinction between ropeways for winter recreation, non-winter recreation, and non-recreation.

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2720.1 — Authority

For further direction on authorities, see FSM 2701.

1. The act of June 4, 1897 (16 U.S.C. 551), also known as the Organic Act, the Term Permit Act of 1915 (16 U.S.C. 497), and the act of September 3, 1954 (43 U.S.C. 931c and 931d), except as provided elsewhere in this chapter, (for State and local governmental or public agency applicants requesting use of more than 80 acres) provides for special use authorizations involving the following types of special uses: recreation; agriculture; community and public information; feasibility, research, training, and cultural and historical resources (non-disturbing use and treasure hunting); industry; and water (non-power generating).
2. The Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1761-1771). Authorizes for special use authorizations involving the following types of special uses: energy generation and transmission, transportation, communications, and water.
3. The Antiquities Act of June 8, 1906 (16 U.S.C. 431) or Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa). Allows for cultural resource or historic special use authorizations.
4. Section 7 of the Granger-Thye Act of April 24, 1950 (16 U.S.C. 580d). Provides for authorizations involving the use of a federally owned structure.
5. The National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b). Is the exclusive authority to approve Nordic and alpine ski areas except as provided for in FSM 2721.61e.
6. The Act of May 26, 2000 (16 U.S.C. 460l-6d). Authorizes all authorizations issued for still photography or commercial filming (FSH 2709.11, ch. 40, sec. 45.5).

2720.3 — Policy

Base land use fees for special uses on an analysis of the market rental values for similar uses in the area. Use individual appraisals, land use fee schedules based on market evidence, and competitive bidding as appropriate to determine fair market value (FSH 2709.11, ch. 30).

See FSM 2710.03 and 2723.7 for the policy on temporary encroachment use.

Use codes corresponding to the designations in FSM 2720 are found in FSH 2709.11, chapter 10, section 19, exhibit 2.

2720.31 — Holder Housing [Reserved]

2720.5 — Definitions

For additional definitions, see 36 CFR 251.51 and FSM 2705.

Indian. A member of an Indian tribe.

Indian Tribe. Any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community that is included on a list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

Special Uses Organization:

- a. **Special Use Category.** The first subdivision of a special use class. All uses within a particular category are generally similar in purpose. These categories are further broken down into designations.
- b. **Special Use Class.** The first division in the arrangement of special uses by topics into broad classes, which are further divided into categories and designations.
- c. **Special Use Designation.** The designation for each type of special use. Each designation carries an individual code indicating the type of use.

Traditional and Cultural Purpose. With respect to a definable use, area, or practice, identified by an Indian tribe as traditional or cultural because of its long-established significance or ceremonial nature for the Indian tribe.

2721 — Recreation Special Uses

2721.01 — Authority

See FSM 2701 and 2720.1 for the primary laws relating to special uses of National Forest System (NFS) lands for recreation purposes.

2721.02 — Objective

To issue and to administer special use permits for recreation uses that serve the public, promote public health and safety, and protect the environment.

2721.03 — Policy

1. Manage recreation special uses of NFS lands in accordance with the direction in this chapter and FSM 2340.
2. Issue special use permits for recreation special uses of NFS lands in accordance with direction in this section and FSH 2709.11, chapter 10.
3. Determine land use fees for recreation special use permits based on the fair market value of the use. Calculate the fair market value by direct rental comparisons, by application of an appropriate percentage to the fair market value of the land, or by other prescribed fee rate systems described in FSH 2709.11, chapter 30.

2721.04 — Responsibility

See FSM 2704 for responsibilities relating to issuance and administration of special use permits

for recreation facilities, activities, and services.

2721.1 — Privately Owned Improvements Authorized for Groups

Restrict permittees to organized groups such as youth groups, service clubs, churches, private clubs, and associations of permittees under normal circumstances. Permits may also be issued to semipublic or public agencies.

2721.11 — Boat Dock or Wharf

This designation covers recreation improvements that serve groups of boaters, such as boathouses, docks, wharfs, slips, launching ramps, or piers.

See FSM 2347.4 for direction relating to management of boat docks and wharfs for recreational purposes. For installations that include commercial services, such as dockage, boat repair, fuel, food, and lodging, see FSM 2721.38. See FSM 2727.22 when such improvements are nonrecreational in character.

The minimum annual land use fee for a boat dock or wharf is \$30. When this use is included in another permit, make the charge a part of the total land use fee due.

2721.12 — Club

This designation covers those recreation improvements that are developed and operated to serve the membership of a private organization.

See FSM 2347.2 for direction relating to management of permits for club use.

The minimum annual land use fee for a club is \$150. If private lodging arrangements are permitted, as discussed in FSM 2347.1, paragraph 5, make an additional charge equal to the rental value of cabin sites in that vicinity for each private unit.

2721.13 — Organizational Camp

This designation includes camps of a public or semipublic nature that are developed by the special use authorization holder, by the Federal government, or jointly by both.

Normally, only nonprofit organizations or governmental agencies qualify for special use authorizations in this category.

Classify as “clubs” camps developed exclusively for members of an organization (FSM 2721.12). Classify as “private camps” private entrepreneur youth camps (FSM 2721.15). Classify as “education centers” camps that primarily provide educational opportunities (FSM 2724.32).

For additional direction on organizational camps, see FSH 2709.11, chapter 30, section 36.5, and FSH 2709.14, chapter 10, section 13.

2721.14 — Shelter

This designation includes trail shelters, waiting sheds, and similar structures of a recreational nature. See FSM 2723.64 for policy on nonrecreational shelters.

See FSM 2347.5 for direction relating to management of recreation shelter permits.

The minimum annual land use fee for a shelter is \$30 per year.

2721.15 — Private Camp

This designation includes youth camps operated privately for profit. It does not include camps developed to provide exclusive use to members of an organization. Such camps are designated as clubs (FSM 2347.2 and 2721.12).

See FSM 2343.3 for direction relating to management of private camps.

The minimum annual land use fee for a private camp is \$150.

2721.2 — Noncommercial, Privately Owned Improvements Authorized to Individuals

This category includes privately owned recreation facilities permitted to individuals for their use.

Where auxiliary facilities, such as boat docks, are used in conjunction with another permitted use, such as a recreation residence, include the secondary use in the permit for the primary use.

2721.21 — Isolated Cabin

This designation includes isolated recreation cabins located on sites not planned or designated for recreational cabin purposes. Use of these cabins originated from situations other than occupancy trespasses or invalid mining claims. In most circumstances, these uses should be phased out. The period of continued occupancy may be flexible, but normally should not exceed 15 years. See FSM 2721.23 for direction on recreation residences and FSM 2723.71 for direction on resolving trespass and invalid mining claims problems.

The minimum annual land use fee for an isolated cabin is \$150 per year.

2721.22 — Houseboat

This designation includes any craft that is used principally for recreation occupancy purposes as opposed to transportation.

See FSM 2347.3 for direction relating to management of houseboats.

In the absence of market rental data, calculate fees for privately owned and operated houseboats so that these fees equal or exceed the market rent for cabin sites in the adjacent or nearby area (FSH 2709.11).

The minimum annual land use fee for a houseboat is \$150 per year.

2721.23 — Recreation Residence

The term "recreation residence" includes only those residences that occupy planned, approved tracts or those groups of tracts established for recreation residence use. See FSM 2347 for general direction on administering recreation residence permits.

2721.23a — Administration

The following direction relates specifically to issuance and administration of special use permits for a recreation residence. For recreation residence permits in Alaska, follow the additional requirements in section 1303(d) of the Alaska National Interest Lands Conservation Act.

Administer recreation residence permits in accordance with the direction in FSM 2721.23a through 2721.23i and the direction governing special uses in FSM 2347.1 and 36 CFR Part 251, Subpart B.

1. Issue special use permits for recreation residence in the name of one individual or to a husband and wife. Upon issuance of a new permit that continues the use or amendment, revise authorizations that are not issued to an individual or to a husband and wife, so that the responsible person is identified.
2. Issue no more than one recreation residence special use permit to a single family (husband, wife, and dependent children).
3. Do not issue special use permits for recreation residence use to entities such as commercial enterprises, nonprofit organizations, business associations, corporations, partnerships, or other similar enterprises, except that a tract association may own a caretaker residence.
4. Issue all recreation residence permits in a tract, or in logical groups of tracts, with the same expiration date, to the extent possible.
5. To help defray costs and provide additional recreation opportunities, a holder may obtain permission for incidental rental for specific periods; ensure that rental use is solely for recreation purposes and does not change the character of the area or use to a commercial nature. Rental arrangements must be in writing and approved in advance by the authorized officer. The holder must remain responsible for compliance with the special use authorization.
6. Allow no more than one dwelling per lot to be built. In those cases where more than one dwelling (residence/sleeping cabin) currently occupies a single lot, allow the use to continue in accordance with the authorization. However, correct such deficiencies, if built without prior approval, upon transfer of ownership outside of the family (husband, wife, and dependent children).
7. When a recreation residence is included in the settlement of an estate, issue a new special use permit to the properly determined heir, if eligible, for the remainder of the original permit term, updated to reflect policy and procedural changes. Prior to estate

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settlement, issue an annual renewable permit to the executor or administrator to identify responsibility for the use pending final settlement of the estate. When a recreation residence is sold, issue a new term permit to the buyer, if eligible, for the remainder of the original permit term, updated to reflect policy and procedural changes.

8. Specify in the permit that the recreation residence must be occupied at least 15 days annually, the minimum acceptable period of occupancy.
9. Issue recreation residence term permits for a maximum of 20 years, except when the need for a shorter term has been determined by a project analysis in accordance with FSM 2721.23e and FSH 2709.14, chapter 20.
10. When a decision is made to convert the lot to an alternative use (FSM 2721.23e), take the following actions:
 - a. Notify the holder of the reasons and provide a copy of the decision documentation.
 - b. Allow at least 10 years of continued occupancy after notification.
 - c. Allow the current term permit to expire under its own terms and, if the holder is entitled to additional time to satisfy the 10-year notification period, issue a new term permit for the remaining period. Clearly specify any limited tenure by including the following statement in the permit:

This permit will expire on [date] and a new permit will not be issued.
 - d. Issue term or annual permits for additional periods as needed to allow continuation of occupancy until conversion to the alternate public use is ready to begin.
11. Before the Forest Supervisor issues a decision to convert a lot to an alternative public use, submit the proposed decision, supporting documentation and summary of public comments, to the Regional Forester for review for adequacy of the documentation and analysis. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the Regional Forester shall instruct the Forest Supervisor to remedy the deficiencies and reconsider the proposed decision prior to making the final decision.
12. As with any resource allocation made in a forest land and resource management plan, the Forest Supervisor may reconsider a decision to continue or convert recreation residence lots to an alternative public use at any time new or changed conditions merit such reconsideration.
13. In the event a recreation residence is destroyed or substantially damaged by a catastrophic event such as a flood, avalanche, or massive earth movement, conduct and document an analysis to determine whether improvements on the lot can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the recreation residence permit terminates in accordance with its terms. Allow rebuilding if the lot can be occupied safely and the use remains consistent with the

applicable land management plan. If the need for an alternative public use at the same location has been established prior to the catastrophic event, do not allow rebuilding if the improvements are more than 50 percent destroyed. If rebuilding is not authorized, in-lieu lots may be offered as provided by FSM 2347.1, paragraph 6, and FSH 2709.14, chapter 20, section 23.4.

14. At the time permits are issued, advise holders that the terms of the permit require that they notify the Forest Service if they intend to sell their improvements and that they must provide a copy of the permit to a prospective purchaser before finalizing a sale. Whenever possible, the authorized officer should advise a prospective purchaser of the terms and conditions of the permit before a sale is final.
15. Do not stay a fee increase pending completion of an appeal of the fee under the administrative appeal regulations. Make any adjustments resulting from the administrative review through credit, refund, or supplemental billing.
16. During the term of a permit, terminate or revoke the use only in accordance with regulations at 36 CFR 251.60 and the terms and conditions of the permit (FSM 2347.1, para. 5). Except for revocation for noncompliance of terms of the permit, the Forest Supervisor shall submit proposed revocations, with supporting documentation and a summary of the public comments, to the Regional Forester for review prior to the Forest Supervisor's issuance of a decision. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the Regional Forester shall instruct the Forest Supervisor to remedy the deficiencies and reconsider the proposed revocation prior to making the final decision.

2721.23b — Applications

Notify a new or prospective owner that they must make application for the authorization to use existing improvements in accordance with 36 CFR 251.54, as practicable.

2721.23c — Permit Preparation

1. Use the Term Special Use Permit for Recreation Residence, form FS-2700-5a, to authorize recreation residences, except as specified in paragraph 2 of this section.
2. Use form FS-2700-4, Special Use Permit, when:
 - a. Conversion of the lot to an alternative public use is authorized, the conversion will be delayed, and a minimum term of continued use cannot be predicted.
 - b. Continuance of the recreation residence use is conditioned on the owner's complying with specific Forest Service requirements before a term permit is issued.
 - c. The improvements are managed by a third-party pending settlement of an estate, bankruptcy proceedings, or other legal action.
 - d. Year-long occupancy is authorized by the Forest Supervisor, at which time the

improvement ceases to be a recreation residence.

3. In either permit, identify all authorized improvements associated with recreation residence use. Do not authorize use of more than the statutory maximum of 5 acres under a term permit. Authorize community or association-owned improvements, such as water systems, by a separate permit (form FS-2700-4).

2721.23d — Land Use Fee Determination

For further direction, see FSH 2709.11, chapter 30.

1. Use market value as determined by appraisal in determining the base annual fees for recreation residence lots. Determine a new base fee at 10-year intervals.
2. Adjust the fee annually by the annual (second quarter to second quarter) change in the Implicit Price Deflator-Gross Domestic Product (IPD-GDP).
3. Use professional appraisal standards in appraising recreation residence lots for fee determination purposes (FSH 2709.11 and 5409.12).
4. Contract with private fee appraisers to perform the appraisal, where practicable.
5. Require appraisers to coordinate the assignment closely with affected holders by seeking advice, cooperation, and information from the holders and local holder associations.
6. Retain only qualified appraisers. Use those appraisers most knowledgeable of market conditions within the local area, to the extent feasible.
7. Before accepting any appraisal, conduct a full review of the appraisal to ensure the instructions have been followed and the assigned values are supported properly.

2721.23e — Recreation Residence Continuance

See FSM 2347.1 for the general policy on recreation residence use. Follow the direction in this section and the procedures in FSH 2709.14, chapter 20, section 23.3, in determining whether recreation residence term permits may be issued for a new term at current lots. The permit continuance process is depicted in FSH 2709.14, chapter 20, section 23.3, exhibit 1.

The Forest land and resource management plan (forest plan) provides direction for continuance of the recreation residence use (FSM 1920). As forest plans are revised, availability for recreation residence use shall be explicitly addressed in the plan through delineation of management areas and associated management area prescriptions (FSM 1920).

Decisions to issue new recreation residence term permits following expiration of the current term permit require a determination of consistency with the current forest plan. Make this determination by evaluating the extent to which continued recreation residence use adheres to the standards and guidelines, which apply to the appropriate management area. Address continuation of recreation residence use on a tract or group of tracts basis, not on individual

lots.

1. **Use is Consistent with Applicable Land Management Plan.** When recreation residence use is consistent with the applicable land management plan, it shall continue. If the use has been analyzed sufficiently as part of a completed environmental assessment (EA) or environmental impact statement (EIS) completed within the 5 years prior to permit expiration, issue a new term permit upon expiration of the current term permit. Issue a record of decision or a decision notice and finding of no significant impact only if the use was not specifically approved in the appropriate decision document. If the use has changed and such change has not been analyzed sufficiently as part of a completed EA or EIS, complete the appropriate environmental analysis (FSH 1909.15). If the EA or EIS indicating the use is consistent with the forest plan was completed more than 5 years prior to permit expiration, additional environmental documentation is necessary (FSH 1909.15, ch. 10, sec. 18.03). Initiate action to issue a new term permit 2 years prior to permit expiration.
2. **Use May Not be Consistent with Applicable Land Management Plan.** When the lands currently authorized for recreation residence use are allocated to alternative public uses through amendment or revision of the applicable land management plan, and continued recreation residence use may be inconsistent with standards and guidelines, which apply to the appropriate management area, the Forest Supervisor shall conduct a project analysis of the alternative public use(s) (FSH 1909.15). This project analysis shall consider continuation of existing recreation residence use (through appropriate modification of the term permit provisions or amendment of the forest plan to accommodate the use) or discontinuation of the use (see FSM 2347.1 for direction on recreation residence use continuance). Decisions reached by the project analysis must comply with National Environmental Policy Act (NEPA) requirements and are subject to appeal under administrative appeal regulations at 36 CFR Parts 214 and 217.
 - a. If the project analysis results in a decision to amend the forest plan so that the recreation residence use may continue, modify the provisions of the current term permits as appropriate. New term permits may be issued following current permit expiration. Additional environmental documentation may be necessary (FSH 1909.15).
 - b. If the project analysis results in a decision to convert a lot to an alternative public use at some point in the future, grant the holder at least 10 years continued use from the date of the decision, unless the continued use conflicts with law and regulation, and identify the specific alternative public use(s) for which the land is being recovered. As provided by FSM 2347.1, the authorized officer may allow continued use of the lot until such time as conversion of the new use is ready to begin by issuing a new permit for the remaining period and amending the applicable land management plan if needed.
 - c. Review the project analysis decision 2 years prior to permit expiration to determine if

there have been any changes in resource conditions that require another look at the decision. If the decision was made less than 5 years prior to permit expiration and the review shows that conditions have not changed, implement the project analysis-based decision. Affirmation of such decision is not appealable (36 CFR 251.83). If the decision was made more than 5 years from permit expiration and/or review indicates that resource conditions have changed, update the analysis to determine the proper action. Decisions arising from this new analysis are appealable.

2721.23f — In-Lieu Lots

When new permits will not be issued following expiration of the present permit, make a reasonable effort to provide an in-lieu lot, if available, at locations not needed in the foreseeable future (generally, the period covered by the forest plan) for alternative public uses in accordance with FSM 2347.1, paragraph 6, and FSH 2709.14, chapter 20, section 23.4.

2721.23g — Land Exchange

Proposals to convey recreation residence tracts into private ownership by land exchange may be considered at any time. Such proposals must be processed in accordance with the instructions in FSM 5430 applicable to all land exchanges.

2721.23h — Cooperation and Issue Resolution

Authorized officers shall strive to reduce conflict between holders and the Forest Service arising from permit administration. As necessary, specify a forest officer to work with the holders, their representatives, and other interested parties on specific issues.

1. Provide opportunity for holders and their representatives to participate in issue resolution. Except where an imminent hazard or risk to health and safety or resources requires immediate action prior to issuing written decisions related to permit administration, meet in person or by telephone with holders and their representatives to discuss any issues or concerns related to the permit and to reach a common understanding and agreement, where practicable.
2. During land management plan amendment or revision and project analysis, seek full involvement of holders and their representatives in public involvement opportunities and activities. Encourage and solicit their input and comments. Meet with holders and their representatives to discuss any issues or concerns arising in the planning and analysis processes and explores opportunities to resolve those issues prior to issuing a decision.
3. If a decision is administratively appealed, utilize the opportunities provided in the appeal rules (36 CFR Part 214 or Part 217) to discuss the appeal with the appellant and any intervenors to explore opportunities to resolve the issues by means other than review and decision on the appeal.

2721.23i — Noncompliance

Give written notice and provide a reasonable opportunity for a holder to correct special use permit violations before terminating the use for noncompliance with the permit terms (36 CFR 251.60(e)). Prior to revocation for noncompliance, the holder must be given notice and a reasonable opportunity to correct the noncompliance (FSM 2347.1, para. 5).

2721.23j — Lot Restoration

On expiration of a permit, which will not be reissued, or for revocation or termination prior to expiration (FSM 2721.23a, para. 10 and 16), except for revocation in the public interest, require the holder to restore the property to a condition acceptable to the Forest Supervisor (36 CFR 251.60(j)). The holder may relinquish the improvements to the Forest Service upon approval of the Forest Supervisor. Terms and conditions for lot restoration are given in the term permit issued for recreation residences.

2721.24 — Caretaker Residence

See FSM 2347.12 for direction on caretaker residence permits.

2721.3 — Concessions Involving Privately Owned Improvements

Lodging covers concessioner-operated facilities that provide overnight accommodations.

See FSM 2343.3 for direction relating to administration of special use authorizations for lodging and overnight accommodations. Lodging is normally authorized as an adjunct to a resort permit and not as a stand-alone business. Authorize and administer combinations of facilities and activities under a permit carrying the designation of the predominant facility or activity.

2721.31 — Cooperative, Condominium, Cabin, Trailer Court, or Camp

2731.31a — Cooperative, Condominium, or Cabin

This designation includes condominium-financed facilities on NFS land originally authorized for private use or private privilege. A few improvements have been authorized where exclusive personal, private use has been allowed, or where the investor-owner has first-choice use privileges.

See FSM 2347.6 for direction relating to management of private lodging on NFS System lands.

Calculate annual land use fees for private lodging based on private and public use of NFS lands. See FSH 2709.11, Special Uses Handbook, for instructions on calculating annual land use fees for private lodging.

2721.31b — Trailer Court or Camp

This designation includes commercial trailer courts financed with private capital and located on

NFS lands. Authorize trailer courts and camps when such use is necessary and desirable under guidelines described in FSM 2343.3 and 2343.7.

Conduct competitive bidding processes for sites when there is competitive interest.

Calculate annual land use fees for a trailer court or camp under the Graduated Rate Fee System (GRFS) (FSH 2709.11, ch. 50, sec. 52.1). The minimum annual land use fee for a trailer court or camp is \$300 per year.

2721.32 — Hotel or Motel

This designation includes facilities limited primarily to the provision of overnight public accommodations. The permit may authorize certain other services or activities in addition; however, when these constitute more than just a minor adjunct to the hotel, motel, or cabin business, use the resort (FSM 2721.33), marina (FSM 2721.52), or winter recreation resort (FSM 2721.61) designation.

See FSM 2343.3 for direction relating to management of lodging and overnight accommodations, including hotels and motels.

Normally, authorize hotel and motel facilities under a term permit issued under the Term Permit Act of 1915 (FSM 2701).

Calculate land use fees for hotels and motels under GRFS (FSH 2709.11, ch. 50, sec. 52.1). The minimum annual land use fee for a hotel or motel is \$300 per year.

2721.33 — Resort

Resorts are concessioner developments that include a complex of enterprises. They may include any of the activities or services covered in FSM 2721.4 or 2721.58. In addition, winter recreation resorts include uphill transport systems and other specialized services covered in FSM 2721.6.

1. Determine the minimum public services to be provided by the holder and those services that may be optional. Make these a condition of the permit. See FSM 2343 for direction relating to management of the various types of resorts authorized on NFS lands. See also FSM 2344 for direction on authorizing federally owned resorts.
2. Except for ski areas authorized under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) and those ski areas which elect to have their permit fees calculated under section 701 of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 497c; FSH 2709.11, sec. 38), calculate resort fees under GRFS (FSH 2709.11, ch. 50, sec. 52.1). The minimum annual land use fee for a resort is \$300 per year.
3. Ensure that the required review by the Regional Forester is completed prior to issuance of a permit where the capital investment to be authorized exceeds or is expected to exceed \$500,000 for resorts.

2721.34 — Campground, Privately Owned [Reserved]

2721.35 — Restaurant

This designation includes all uses that have as a principal purpose the serving of meals to the public. The service occurs most frequently as a part of a resort or as a part of another service or activity.

See FSM 2343.4 for direction relating to management of restaurants on NFS lands.

Calculate annual land use fees for a restaurant under GRFS (FSH 2709.11, ch. 50, sec. 52.1).

2721.36 — Other Commercial Public Services

2721.36a — Store, Shop, or Office

This designation includes use normally associated with other commercial public services found in a resort complex.

See FSM 2343.5 for policy relating to stores and shops and FSM 2341 for policy relating to offices.

Calculate fees for stores and shops under GRFS and for offices on the basis of the value of the use and occupancy of the authorized NFS lands (FSH 2709.11). The minimum annual land use fee for a store, shop, or office is \$300 per year.

2721.36b — Rental Service Facility

This designation includes rental services not otherwise covered in FSM 2721.5. Normally, needed rental services are encouraged as an adjunct to an existing permit.

See FSM 2343.7 for direction relating to management of rental services.

Calculate annual land use fees for a rental service facility under GRFS (FSH 2709.11, ch. 50, sec. 52.1).

2721.37 — Service Station

This designation includes commercial garages, gasoline stations, and related facilities such as car washes and parking lots.

See FSM 2343.6 for direction relating to the determination of need for a service station and the facilities and services that may be provided.

Calculate annual land use fees for a service station under GRFS (FSH 2709.11, ch. 50, sec. 52.1).

2721.38 — Marina

This designation includes a combination of waterfront uses that are boating oriented. These

uses may include a dock or basin providing secure moorings for all types of boats, launching ramps, the supplying of food, water, fuel, repair, and other facilities or services.

See FSM 2343.2 for direction relating to management of marinas on NFS lands and waters.

Calculate fees for marinas under GRFS (FSH 2709.11, ch. 50, sec. 52.1). The minimum annual land use fee for a marina is \$300 per year.

When a marina's business includes boat rental service, require compliance with State boat laws and the Federal Boating Act of 1958 (Pub. L. No. 89-911, 72 Stat. 1754) in the permit. Require the permittee to post rules for safe operation of boats at each boathouse, dock, or wharf.

2721.39 — Ropeway (Aerial Tramway, Aerial or Surface Lift, Tow, Conveyor, or Funicular)

This designation includes an aerial tramway, aerial or surface lift, tow, conveyor, or funicular (hereinafter “ropeway”) operated for recreational purposes other than winter recreation. A ropeway operated for winter recreation purposes should be coded as 161 or 162 (FSM 2721.6). See FSM 2721.62 for direction on ropeways operated for winter recreation purposes. See FSM 2727.7 for direction related to ropeways operated for purposes other than recreation, such as mining or other industrial activities, which are covered by use code 771.

See FSM 2340.3 and FSM 2343.9 for direction relating to administration of special use authorizations for ropeways on NFS lands. See FSM 7320 for direction related to structural safety for the construction, operation, and maintenance of ropeways.

Include in a special use authorization for a ropeway the following mandatory supplemental clauses from FSH 2709.11, chapter 50, section 52.3: clause C-18, Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars, and clause C-19, Inspection of Ropeways.

Authorize relatively minor ropeways under the Federal Lands Recreation Enhancement Act (FLREA) or the Organic Administration Act using form FS-2700-4, Special Use Permit, for a term of up to 5 years. Authorize more substantial ropeways under the Term Permit Act of 1915, using form FS-2700-5, Term Special Use Permit, for a term of up to 20 years (requires Forest Supervisor approval) or up to 30 years (requires Regional Forester approval). Calculate annual land use fees for a ropeway under GRFS (FSH 2709.11, ch. 30). The minimum annual land use fee for a ropeway is \$300.

2721.4 — Concessions Involving Federally Owned Improvements

This category involves recreation activities that utilize facilities and/or NFS lands.

Authorize and administer combinations of activities or activities and services (FSM 2721.5) that are not a part of a resort facility under a permit carrying the designation of the predominant activity or service. Authorize the activity or service in the resort special use permit when it is a part of the opportunities offered by a resort. Direction relating to these concession operations is found in FSM 2340.

2721.41 — Campground Concession

This designation includes camping and picnicking when these activities are the primary authorized uses. Camping and picnicking areas developed by non-Federal agencies, as well as holder-operated sites, are included.

See FSM 2344.3 for direction relating to concessioner-operated camping facilities.

See FSH 2709.11, Special Uses Handbook, for direction on computing annual land use fees for use of NFS lands for camping and picnicking.

2721.42 — Concession Day Use Site [Reserved]

2721.43 — Organizational Camp [Reserved]

2721.44 — Recreation Lodging in Federally Owned Buildings [Reserved]

2721.45 — Visitor Center [Reserved]

2721.46 — Resort [Reserved]

2721.5 — Concession Services

This category includes concessions without facilities on NFS lands that provide recreational services to the public.

Do not authorize the construction of facilities under use codes 151, 152, or 153. For concessions involving privately owned improvements, see 2721.3. Direction for these concession operations is included in FSM 2343.

2721.51 — Rental Service Without Facilities

See FSH 2709.11, chapter 10, for direction relating to a rental service without facilities.

2721.52 — Transportation Service [Reserved]

2721.53 — Outfitting and Guiding

This designation includes all commercial outfitting operations involving services for accommodating guests, transporting persons, and providing equipment, supplies, and materials. It also includes commercial guiding activities wherein the guide furnishes personal services or serves as a leader or teacher.

See FSM 2343.8 and FSH 2709.11, Special Uses Handbook, for direction relating to administration of special use authorizations for outfitting and guiding on NFS lands and waters. In addition:

1. Require all private parties conducting outfitting and guiding on NFS lands to have a

special use authorization.

2. Allow placement of temporary structures and improvements, such as corrals, tent frames, and shelters, on NFS lands under special use authorization only when there is a demonstrated public need for such facilities.
3. Require outfitters and guides with facilities located off NFS lands to obtain a special use authorization if they conduct any activities on NFS lands.
4. Authorize permanent facilities of a substantial nature under a resort special use authorization even though the primary business of the holder may be outfitting and guiding.

Calculate annual land use fees for outfitting and guiding as provided in FSH 2709.11, chapter 30.

2721.6 — Winter Recreation

Winter recreation refers to all facilities, activities, and services related to a winter recreation operation. Developments may include a resort, ski slopes or trails, ropeways for a facility located partially on private land, and snow play facilities. Skiing activities such as ski schools are also included.

2721.61 — Winter Recreation Resort

This designation includes resorts associated with various forms of winter outdoor recreation, though they often may be used for summer recreation purposes also. Make provision in the permit, as needed, to allow all-season uses. See FSH 2709.11 for general instructions on the prospectus, application for permit, permit preparation, permit issuance, and permit administration.

2721.61a — Permit Conditions

Normally, authorize resorts that have more costly elements of development, such as a base lodge and related buildings and ropeways, under a term permit. Authorize under a special use permit other than a term permit ski trails and other minor improvements. Ensure that the entire area necessary for the operation is covered by permit.

2721.61b — Land Use Fees

Calculate annual land use fees for winter recreation permits under the ski area land use fee system established by 16 U.S.C. 497c (FSH 2709.11, ch. 30, sec. 37) or under GRFS (FSM 2715.11) as follows:

1. **Land Use Fee System for Ski Areas Authorized Under National Forest Ski Area Permit Act of 1986.** For ski areas authorized under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b), calculate land use fees under the land use fee system established

by 16 U.S.C. 497c and set out in FSH 2709.11, chapter 30, section 37.

2. **Land Use Fee System for Ski Areas Authorized Under Organic Administration Act of 1897 and Term Permit Act of 1915.** For ski areas authorized under the Organic Administration Act of 1897 (16 U.S.C. 551) and the Term Permit Act of 1915 (16 U.S.C. 497), provide holders the opportunity to elect the land use fee system in 16 U.S.C. 497c (FSH 2709.11, ch. 30, sec. 37). Do not require conversion of those permits to a permit issued under the National Forest Ski Area Permit Act of 1986. If the holder does not elect to have land use fees calculated under the ski area land use fee system in 16 U.S.C. 497c, continue to calculate land use fees according to the method specified in the holder's permit (FSM 2715.11). For Nordic areas where primarily outfitting and guiding are conducted, continue to apply the land use fee system specified in the existing permit. See FSM 2721.61e, paragraph 4, for direction on the characteristics of a Nordic operation eligible for authorization under the National Forest Ski Area Permit Act of 1986 and for applicability of the land use fee system to those areas, as set out in FSH 2709.11, chapter 30, section 37.
3. **Land Use Fee System for Operations That Include Incidental Skiing Activities or Facilities.** For resorts that primarily operate in the summer but include minor skiing operations (such as a simple ropeway or minor Nordic operations), continue to apply the land use fee system specified in the existing permit. For activities that are authorized under the National Forest Ski Area Permit Act of 1986 but include only incidental skiing operations, apply the land use fee system in 16 U.S.C. 497c (FSH 2709.11, ch. 30, sec. 37). If the use will be reauthorized upon expiration of the permit, authorize those activities under a more appropriate authority listed in FSM 2701, with the appropriate land use fee system.
4. **Land Use Fee System for Ropeways.** Use the following land use fee systems for ropeways:
 - a. If the ropeway is authorized under the Term Permit Act of 1915 or the Organic Administration Act of 1897, establish land use fees for the ropeway using a flat fee (FSH 2709.11, ch. 50, sec. 52.1, clause A-3, Flat Fee for Small Concessions) or GRFS (FSM 2715.11), as applicable. If the ropeway is authorized under the National Forest Ski Area Permit Act of 1986, apply the land use fee system established by 16 U.S.C. 497c (FSH 2709.11, ch. 30, sec. 37). Strive to authorize ropeways under a more appropriate authority listed in FSM 2701, with the appropriate land use fee system. See FSM 2721.62 for direction regarding winter recreation ropeways. See FSM 2721.39 for direction on ropeways for recreational purposes other than winter recreation. See FSM 2727.7 for direction related to ropeways for purposes other than recreation.

2721.61c — Winter Recreation Site Operating Plan

Require an operating plan (FSM 2343.12) for each permit covering winter recreational activities.

2721.61d — Holder Inspection

Include in permits for winter recreation sites requirements that holders provide for public safety as outlined in FSM 2343.1 and 7320 and the latest edition in effect of American National Standards Institute (ANSI) Standard B77.1, American National Standard for Passenger Ropeways — Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors — Safety Requirements (ANSI B77.1), or ANSI Standard B77.2, Funiculars — Safety Requirements (ANSI B77.2), as applicable, or applicable State standards that have been certified in writing by a qualified ropeway engineer to be more restrictive than ANSI B77.1 or B77.2.

2721.61e — Ski Areas (36 CFR 251.51)

1. The National Forest Ski Area Permit Act (16 U.S.C. 497b) is the exclusive authority for authorizing primarily or entirely privately owned Nordic and alpine ski areas on NFS lands. Assign use code 161 and use only the National Forest Ski Area Permit Act and form FS-2700-5b, Ski Area Term Special Use Permit, to authorize alpine ski areas and Nordic trail systems that have substantial capital improvements on NFS lands. Authorize ski areas operating entirely or primarily with federally owned facilities under section 7 of the Granger- Thye Act (16 U.S.C. 580d). See 36 CFR 251.51 for the definition of “ski area.”
2. The following uses do not constitute ski areas and therefore should be assigned a different use code and authorized under an authority other than the National Forest Ski Area Permit Act, using a permit form other than FS-2700-5b, Ski Area Term Special Use Permit:
 - a. Nordic skiing that:
 - (1) Is independent of an alpine ski resort;
 - (2) Is not conducted from a Nordic center located on NFS lands;
 - (3) Involves only grooming and temporary signing of federally owned trails; and
 - (4) Involves no privately owned improvements on NFS lands.

Assign use code 163, ski slope or ski trail, to these activities, and authorize them under section 803(h) of FLREA (16 U.S.C. 6802(h)) or the Organic Administration Act (16 U.S.C. 551) using form FS-2700-4, generally with a term of up to 5 years. See FSM 2721.63.

- b. Nordic and alpine skiing operations with only minor improvements on NFS lands, such as where:

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Chapter 20 — Special Uses Administration

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- (1) Use of NFS lands for Nordic skiing is limited to a partial trail system that extends less than 10 miles or that involves less than \$1,000,000 in privately owned improvements and that is incidental to facilities on private land; or
- (2) Use of NFS lands for Nordic or alpine skiing consists of minor portions of undeveloped terrain or a few cleared ski trails with no snow-making facilities, ropeways, or other infrastructure.

Assign use code 163, ski slope or ski trail, to these activities, and authorize them under section 803(h) of FLREA or the Organic Administration Act using form FS-2700-4, generally with a term of up to 10 years. See FSM 2721.63.

- c. Nordic skiing that primarily involves outfitting and guiding (see 36 CFR 251.51 for definitions of “outfitting” and “guiding”), such as heliskiing or guided ski tours without groomed trails or support facilities. Assign use code 153 to these uses and authorize them under section 803(h) of FLREA using form FS-2700-4i or FS-2700-3f, as appropriate.
3. Consult with the Washington Office, Director of the Recreation, Heritage, and Volunteer Resources staff before authorizing a term of more than 5 years for a federally owned Nordic trail system that does not constitute a ski area under FSM 2721.61e, paragraph 2a.
4. Assign a use code of 133, resort, to activities that are primarily summer season operations, such as those that involve a simple ropeway or minimal Nordic skiing and authorize them under the Term Permit Act of 1915 (16 U.S.C. 497).
5. Winter and year-round recreational activities and services provided by the holder within the ski area permit boundary should be authorized under the ski area permit. In general, do not issue separate permits for non-skiing recreational activities that occur solely within the permit area, such as recreation events or outfitting and guiding.
6. Except for condominiums, normally all ski area facilities owned or under the control of the holder should be included in the ski area permit boundary. To the extent they exist on NFS lands, condominiums should be authorized under a separate term permit issued under the Term Permit Act of 1915. See FSM 2347.6 for direction on condominiums.

2721.61f — Environmental Compliance

Ensure that issuance of permits for winter recreation resorts complies with the Council on Environmental Quality’s regulations implementing the National Environmental Policy Act (NEPA), as well as the Forest Service’s NEPA regulations and directives (36 CFR Part 220; FSH 1909.15). See FSH 1909.15 for direction on requirements related to permit issuance for new ski areas that are not currently authorized under a permit. See FSH 1909.15 and 2709.14, chapter 60, section 61.2, for direction on requirements related to issuance of a new permit to replace an existing permit for a ski area on NFS lands.

2721.62 — Ropeway

Assign use code 162 in situations where a ropeway constitutes the most significant development on NFS lands. Situations where a ropeway may be assigned use code 162 include:

1. The ropeway is primarily for winter recreation.
2. The base facility is located on adjacent private land, but a portion of the ropeway is on NFS lands;
3. A ropeway connects a ski area with a private facility, such as a lodge, that is neither owned nor operated by the ski area permit holder; or
4. A community ski area does not provide any of the typical resort services, such as eating or sleeping facilities.

See FSM 2343.1 for direction relating to administration of permits for ropeways.

See FSM 2340.3 and 2343.9 for direction relating to administration of special use authorizations for ropeways on NFS lands. See FSM 7320 for direction related to structural safety for construction, operation, and maintenance of ropeways on NFS lands.

Include the following mandatory supplemental clauses in FSH 2709.11, chapter 50, section 52.3, in special use authorizations for ropeways: clause C-18, Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars, and clause C-19, Inspection of Ropeways.

Authorize relatively minor ropeways under FLREA or the Organic Administration Act using form FS-2700-4 for a term of up to 5 years. Authorize more substantial ropeways under the Term Permit Act of 1915, using form FS-2700-5, Term Special Use Permit, for a term of up to 20 years (with Forest Supervisor approval) or up to 30 years (with Regional Forester approval). Calculate annual land use fees for ropeways consistent with FSM 2721.61b, paragraph 4. The minimum annual land use fee for a ropeway is \$300.

See FSM 2721.39 for direction on ropeways for recreational purposes other than winter recreation. See FSM 2727.7 for direction on ropeways for purposes other than recreation, such as mining or other industrial activities.

2721.63 — Ski Slope or Ski Trail

Assign use code 163 where ski slopes and ski trails constitute the primary development on and use of NFS lands.

For alpine skiing, this use code generally involves use of NFS lands for downhill skiing without ropeways on groomed or ungroomed trails. This use code should be used in those situations where most of a large ski area operates on private land adjacent to the NFS and the capital investment on NFS lands is limited to a few ski trails with or without seasonal grooming. See FSM 2721.61e, para. 2b. More substantial developments on NFS lands should be authorized per FSM 2721.61e, paragraph 1.

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For Nordic skiing, this use code involves trail grooming across NFS lands, with privately owned improvements on NFS lands limited to a partial trail system that extends less than 10 miles or that has a value of less than \$1,000,000 and that is incidental to facilities on private land.

Authorize ski slopes and ski trails under FLREA or the Organic Administration Act using form FS-2700-4, Special Use Permit, for a term of up to 5 years for federally developed trails and a term of up to 10 years for privately developed trails.

Calculate annual land use fees for a ski slope or ski trail based on the value of the authorized use and occupancy of NFS lands or, where mixed landownership is involved, based on the proportion of total revenue generated by the ski slope or ski trail that is attributable to use and occupancy of NFS lands (FSH 2709.11, ch. 30). The minimum annual land use fee for a ski slope or ski trail is \$150.

2721.64 — Skiing Activity

Assign use code 164 for minor skiing activities, such as ski schools that include some minimal improvements or facilities on NFS lands. Do not authorize these activities as separate operations. Where there are existing permits, if reauthorization upon expiration is appropriate, authorize these activities under the same authorization as their associated activities.

Ski instruction without improvements or facilities on NFS lands is designated as outfitting and guiding. See FSM 2721.53. Temporary, short-term skiing events, such as races, are designated as recreation events. See FSM 2721.81 for direction on these events.

Authorize skiing activities under FLREA or the Organic Administration Act using form FS-2700-4, Special Use Permit, for a term of up to 5 years. Calculate annual land use fees for skiing activities under GRFS, subject to a minimum annual land use fee of \$30 (FSM 2715).

2721.65 — Snow Play

Assign use code 165 to activities and facilities for winter recreation that are not directly associated with skiing. Examples include tobogganing, sledding, ice skating, tubing, and avalanche beacon training facilities. Authorize ropeways under this use code provided they are not in place to assist skiers. Use one of the other use codes under FSM 2721.6 when skiers are served.

Authorize snow play activities with only minor improvements or facilities under FLREA or the Organic Administration Act using form FS-2700-4, Special Use Permit, for a term of up to 5 years. Authorize more substantial improvements and facilities for snow play under the Term Permit Act of 1915, using form FS-2700-5, Term Special Use Permit, for a term of up to 20 years (with Forest Supervisor approval) or 30 years (with Regional Forester approval). Calculate annual land use fees for snow play under GRFS (FSM 2715).

2721.7 — Outdoor Recreation Improvements

2721.71 — Target Range

This designation includes pistol, rifle, shotgun, trap, skeet, sporting clay, and archery ranges.

If the proposal involves a military range, consult with the Office of the General Counsel (OGC), including OGC's Pollution Control Team, before issuing the authorization to ensure that issues associated with Department of Defense rules and policies regarding the cleanup of ranges, including future land use issues, are adequately addressed in the proposed authorization language.

See FSM 2335.4, 2340.3, and 2343.9, and FSH 2709.14, chapter 70, section 71, for further direction on requirements related to target ranges, including the process for special use authorizations, National Environmental Policy Act (NEPA) analysis and documentation, the environmental stewardship plan, and the safety plan.

The minimum annual land use fee for a target range is \$30. Use GRFS (FSH 2709.11, ch. 30) to calculate annual land use fees for a target range.

2721.72 — Park or Playground

This designation includes uses that are usually local community ventures. They are generally discouraged on NFS lands.

See FSM 2340.3 and 2341 for direction relating to administration of special use authorizations for a park or playground on NFS lands.

The minimum annual land use fee for a park or playground is \$30 per year.

2721.73 — Golf Course

This designation involves golf courses developed at existing concession sites on NFS lands, where there was a definite public need for those facilities.

See FSM 2341 for direction relating to administration of special use authorizations for a golf course on NFS lands.

Calculate annual land use fees for golf courses under GRFS (FSH 2709.11) unless less than 10 percent of the golf course occupies NFS lands, in which case, charge an annual land use fee based on rental data or other basis for determining the value of the authorized use and occupancy of NFS lands.

The minimum annual land use fee for a golf course is \$30. See FSH 2709.11, chapter 30, for direction on land use fee calculations.

2721.74 — Cave or Cavern

This designation involves concessioner operation of a cave or cavern for public viewing.

Authorize concessioner operation of caves or caverns that have spectacular public viewing opportunities. Base the type of permit (Special Use Permit or Term Special Use Permit) issued on the required investment by the concessioner. Normally, issue a prospectus if the potential number of visitor days warrants a concession operation.

See FSM 2343.9 for direction relating to administration of special use authorizations for concession operation of a cave or cavern.

Calculate annual land use fees for concessioner operation of a cave or cavern under GRFS (FSH 2709.11, ch. 30).

See FSH 2709.11, Special Uses Handbook, for direction on issuance of special use authorizations for noncommercial exploration of a cave or cavern by individuals or groups.

2721.75 — Racetrack

This designation includes racing activities where ongoing use and occupancy of NFS lands by permanent structures and facilities has been authorized. Do not authorize new racetracks.

See FSM 2341 for direction relating to administration of special use authorizations for a racetrack on NFS lands.

The minimum annual land use fee for a racetrack is \$300. See FSH 2709.11, chapter 30, for direction on computing annual land use fees.

2721.76 — Day Use Facility (Picnic Area, Trailhead, Scenic Overlook, or Rest Area) [Reserved]

2721.77 — Visitor Center [Reserved]

2721.78 — Hunting Enhancement [Reserved]

2721.8 — Temporary Event [Reserved]

2721.81 — Recreation Event

This designation includes organized events of a temporary nature, such as animal, vehicle, or boat races; dog trials; fishing contests; rodeos; adventure games; and fairs. Authorize continuing occupancies entailing more or less permanent structures and facilities under other appropriate designations. Require, in all cases, that a specific legal entity be identified as the permittee. In the permits include provisions for protection of the environment and site cleanup and restoration.

Require performance bonds (FSM 2713.1) when needed to ensure return of the site to a satisfactory condition. Require permittees to furnish or arrange for appropriate liability

insurance (FSM 2713.3), law enforcement, crowd control, safety, and sanitation. Include concession stands, vendors, and so forth, in the parent permit. Provide for subleasing in the permit.

The fee is 5 percent of adjusted gross receipts (gross revenue less cost to holder of prizes awarded) for one-time events and 3 percent for multiple events under a single permit. The minimum annual land use fee is \$30 per recreation event.

Authorize recreation events to be held at authorized commercial public service sites under the special use authorization for those sites.

Authorize commercial filming associated with a recreation event under the permit for the recreation event.

2721.82 — Vending or Peddling

This designation includes mobile concession operations that are allowed where store facilities are needed by the public but are not economically feasible.

See FSM 2343.5 for direction relating to peddler permits on NFS lands.

See FSH 2709.11, chapter 30, for direction on calculation of annual land use fees for vending or peddling.

2721.9 — Tribal and Noncommercial Group Use

2721.91 — Noncommercial Group Use

See 36 CFR 251.51 for the definitions of “noncommercial use or activity” and “group use.” Grant applications for noncommercial group use unless they meet one of the criteria listed in 36 CFR 251.54(g)(3)(ii)(A) through (g)(3)(ii)(H) for denial of this type of use. Authorize noncommercial group use on form FS-2700-3b. A special use permit is not required if the use involves fewer than 75 people.

Utilize use code 192 to authorize noncommercial use by Indians and Indian tribes for traditional and cultural use pursuant to section 8104 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3054).

Do not authorize permanent structures under a noncommercial group use permit.

See FSM 2721.81 for direction on recreation events.

2721.92 — Traditional and Cultural Use by Indians and Indian Tribes [Reserved]

2722 — Agriculture

2722.03 — Policy

Because agricultural uses usually serve individual, exclusive interests, as opposed to the public, allow an existing special use authorization for an agriculture use to expire without reauthorizing the use when it is incompatible with other adjacent uses of NFS lands.

2722.1 — Crops

This category includes uses involving the production of crops or products of the land. Do not sell federally owned forest products via a special use permit. Sales of miscellaneous forest products includes the sale of fruit, nuts, tree and grass seed, and jojoba beans from federally owned plants; the harvesting of wild grasses; and the digging of plants, such as cacti or flowers. Direction on their sale or removal is included in FSM 2467.

Generally, there is no prohibition on growing price-supported crops on NFS lands. Applicability of a prohibition may vary annually and by the type of crop grown. Contact the Farm Service Agency to ensure that there are no restrictions on growing a particular price-supported crop on NFS lands.

2722.11 — Cultivation

This designation covers planting and harvesting of traditional farm crops such as alfalfa, corn, soybeans, and others. Cultivation also includes native hay production, which differs from wild hay cutting (FSM 2467) in that it makes use of some minimal cultivation practices. These practices include fencing, irrigation, harrowing, dragging, leveling, fertilizing, and weed control.

Issue cultivation permits only for those lands where the best use is for growing agricultural products or as a temporary expedient following acquisition.

2722.12 — Nursery

This designation includes the planting and growing of horticultural products such as trees (including Christmas trees), flowers, and shrubs. Wildlings are the property of the United States. Do not issue special use permits for the sale, culture, or cultivation of wildlings. See FSM 2460 for direction on the sale of timber and forest products.

2722.13 — Orchard

This designation includes the use of NFS lands for the growing of privately owned trees to produce fruit, nuts, or maple syrup. If the trees are federally owned, apply the direction in FSM 2467.

See FSM 2720.3 for direction on annual land use fees for an orchard. If the direction allows cultivation of an additional crop beneath or between the trees, the annual land use fee may

include a charge for both the orchard and the cultivation uses. See FSM 2722.11 for direction on cultivation uses.

2722.14 — Apiary

This designation covers both the production of honey and the storage of hives. For both uses, comply with State and local ordinances governing beehives. Base annual land use fees for an apiary on the specific type of use.

2722.15 — Livestock Area

This designation includes areas that either do not provide any grazing or that are not logical to manage as part of a grazing allotment because of size, location, adjacent ownership, or topography. Review existing authorizations for this use (formerly referred to as “pasture permits”) and convert them to grazing permits as appropriate (FSM 2200).

2722.16 — Fish Hatchery

This designation involves the hatching and rearing of fish for commercial or game management purposes. See also FSM 2600 for coordination and cooperative programs with State fish and wildlife agencies.

2722.17 — Fur and Game Farm

This designation includes operations that produce game for live sale or the sale of animal products such as pelts or meat.

2722.18 — Worm Harvesting [Reserved]

2722.19 — Mariculture [Reserved]

2722.2 — Agricultural Improvements

This category includes improvements used either for agricultural purposes or in association with agriculture uses. See FSM 2722.3 if the use involves range management facilities. If the United States owns the improvements, the direction on section 7 of the Granger-Thye Act in FSM 2710 also applies.

2722.21 — Barn or Shed

Improvements under this designation include stables, chicken houses, garages, storage buildings, and other utility buildings that do not qualify as range management facilities as described in FSM 2722.3. Authorized officers also may authorize incidental facilities, such as feedlots, pastures, and watering places, and associated fencing adjacent to these structures in special use authorizations issued under this designation.

2722.22 — Fence

This is a limited designation. The designation applies only to privately owned fences that are not used in conjunction with another use, such as a wildlife driveway or a temporary authorization for an encroachment. Authorize fences for these or similar purposes under FLPMA. Where a fence is used in conjunction with another use, include it as part of the authorization for that use.

Require private landowners to either establish or move their boundary fences to the property line to eliminate the need for a permit. See also the direction on convenience enclosures in FSM 2722.4. Generally, federally owned fences assist in the administration of NFS lands in conjunction with grazing permits (FSM 2240). Use either a grazing permit or an interagency agreement to authorize the use of and to assign maintenance responsibilities for federally owned fences.

2722.23 — Agriculture Residence

This designation covers principal places of residence related directly to agriculture. The permit may include small acreage incidental to the residence, such as garden plots or other cultivated land.

Do not issue residence permits under this designation for homes located within or adjacent to a town or established community; use the community residence designation. When issuing a special use authorization for an agriculture residence, follow the direction on community residences in FSM 2723.5.

No authority exists for the Forest Service to issue a term permit for a full-time private residence. Therefore, convert any existing term permits to annual permits with the concurrence of the holder or when the term permit expires.

2722.3 — Range Facilities

The range facilities category includes range management improvements retained in private ownership and used in conjunction with a grazing permit. Review applications for consistency with the applicable land management plan and FSM 2240. New facilities must be federally owned; include them as part of a grazing permit rather than under a separate special use authorization. Review existing special use authorizations and authorize the facilities under a grazing permit as appropriate.

2722.31 — Building

This designation covers buildings such as cabins, residences, barns, and sheds. Residences in this designation differ from agricultural residences in that they are related to a grazing operation and permit. Special use authorizations for these uses must provide for their termination upon transfer or cancellation of the associated grazing permit. Do not issue a special use authorization for these uses unless it is the only way to provide the benefits

conferred by those uses to administration of the range resource. See FSM 2240 for additional direction.

2722.32 — Corral, Pen, and Livestock Area

Follow the direction in FSM 2722.15 for range uses under this designation.

2722.33 — Dipping Vat

This designation consists of tanks or lined trenches for immersing livestock in a chemical bath as a disease and pest control method. Because of the typically heavy concentration of stock near such a facility, do not authorize this use if private land is available for it.

2722.4 — Enclosures

2722.41 — Convenience Enclosure

This designation covers permits for areas of NFS lands fenced in with private land for the convenience of the holder. Examples include fencing on the easiest or most economically feasible location or as a temporary expedient following a land exchange or resurvey of a land line. In a true convenience enclosure, use of the NFS lands is incidental to the operation and management of the holder's property.

Include in special use authorizations for these uses provisions that allow other NFS users to occupy the authorized area to accomplish Forest Service objectives, such as timber sales or recreational activities.

2723 — Community and Public Information

This designation covers services, notification, facilities, or housing for persons living in or adjacent to communities located close to or dependent on NFS lands. The boundaries of these communities often are ill-defined and may occasionally involve encroachments of residences onto NFS lands.

2723.03 — Community Use Policy

A town or community may propose acquisition of the NFS lands for development of urban community improvements rather than seeking a special use authorization. Consider a land exchange under the appropriate authority or sale under the Townsite Act of July 31, 1958 (7 U.S.C. 1012a; 16 U.S.C. 478a). Consult FSM 5400 for methods of transferring ownership of NFS lands.

Do not issue community use authorizations exclusively for road or other linear rights-of-way. Entry roads and driveways appurtenant to community uses may be authorized under community use authorizations. See FSM 2730 for direction on road right-of-way authorizations.

Public information uses involve marking and preserving points of interest to the public and calling attention to those places by appropriate signs, markers, and monuments. Do not authorize advertising on NFS lands, except as provided in FSM 2343.03, paragraphs 11 and 12. Signs along public highways must comply with EM-7100-15, Sign and Poster Guidelines for the Forest Service, and with any agreements between the Forest Service and the State or local public road authorities.

2723.1 — Meetings

2723.11 — Multi-Season Traditional and Cultural Use by Indians and Indian Tribes [Reserved]

2723.2 — Religious Facilities

2723.21 — Cemetery

A cemetery is essentially a permanent use of the land. Once a commitment of the land is made, there is little or no possibility to discontinue the use since discontinuation would involve disinterment. This type of permanent use of NFS lands is not authorized. For this reason, reject proposals for new cemeteries, and do not authorize any expansion of cemeteries on NFS lands. Revise existing special use authorizations for a cemetery to include provisions for perpetual care.

Consider land exchange or sale under the Townsite Act (7 U.S.C. 1012a) of NFS lands occupied by a cemetery, where possible. As appropriate, authorize existing cemeteries in conjunction with related churches on NFS lands (FSM 2723.22). Apply the direction in FSM 2715 in calculating annual land use fees for a cemetery. See FSM 2723.32 for direction on individual grave monuments of historical interest.

2723.22 — Church

Authorize new churches on NFS lands only where suitable private land is not available. Where possible, consider land exchange or sale under the Townsite Act (7 U.S.C. 1012a) of NFS lands occupied by a church. If appropriate, authorize a church in combination with a cemetery (FSM 2723.21). Calculate annual land use fees for a church in accordance with FSH 2709.11, chapter 30.

2723.3 — Public Information

This category includes the use of NFS lands for marking and preserving points of interest to the public and calling attention to those places by appropriate signs.

Include sufficient area in the special use authorization for the construction of turnouts or stopping points as needed.

2723.31 — Marker

This designation includes roadside historical markers, mileage markers, summit markers, and other similar markers that provide public information.

2723.32 — Monument

This designation includes grave monuments, memorial plaques, statues, and similar items of historic or informational interest. Grave monuments covered by this designation mark individual graves of historical interest and do not include grave markers in cemeteries. See FSM 2723.21 for direction on special use authorizations for a cemetery.

2723.33 — Sign

This designation covers informational signs for the convenience of the public. Examples include concession identification, approach signs, and directional information. The authorized officer may authorize signs under special use authorizations for related uses such as resorts, ski areas, or marinas. The authorized officer must approve the design and wording of all signs installed on NFS lands under a special use authorization.

See FSM 7160 and EM-7100-15 for information on the design and construction of signs.

2723.4 — Sanitary Systems

2723.41 — Solid Waste Disposal Site

This designation includes both disposal sites and transfer stations for garbage, trash, and other nonhazardous solid waste. See FSM 2725.2 for guidance concerning storage areas for scrap, junk, and other reusable products.

The authorized officer should work with appropriate state or local government officials to locate these sites on non-NFS lands and to have the state or local governmental entities assume responsibility for operating and maintaining these sites. The United States Environmental Protection Agency is responsible for establishing guidelines for solid waste disposal. Consult FSM 2130 and 7460 and FSH 7409.11 for these guidelines, other applicable legal requirements, and additional direction on storage and disposal of solid waste and, as applicable or appropriate, incorporate the guidelines, legal requirements, and direction into special use authorizations for a solid waste disposal site.

2723.42 — Liquid Waste Disposal Area

This designation covers nonhazardous liquid sewage and industrial waste collection and disposal facilities. These uses are rarely compatible with NFS purposes.

Issue a special use permit or term special use permit when sites on non-NFS lands are not reasonably available.

Pipelines and other directly related rights-of-way that are part of a liquid waste disposal system may be authorized under the permit for the liquid waste disposal area. Consult FSM 7430 and 7440 and FSH 7409.11 for applicable legal requirements, standards, and direction for the storage and disposal of liquid waste and, as applicable or appropriate, incorporate the applicable legal requirements, standards, and direction into special use authorizations for a liquid waste disposal area.

2723.43 — Sewage Transmission Line

This designation includes all pipelines used solely for the transmission of sewage or wastewater. The authority to issue an authorization for this use is FLPMA. If a treatment plant is an integral part of a sewage transmission line, issue the authorization under the use code for a liquid waste disposal area (FSM 2723.42).

2723.44 — Hazardous and Toxic Waste Disposal Site

This designation includes both solid and liquid waste areas that also involve dangerous substances. NFS lands are not appropriate for this type of use. In addition, the Forest Service does not have the authority to issue special use authorizations for hazardous waste disposal or storage (36 CFR 251.54(e)(1)(ix); FSH 2709.11, ch. 10, sec. 12.21, para. 9).

2723.45 — Transfer Station [Reserved]

2723.46 — Debris Disposal Area [Reserved]

2723.5 — Community Residences

This category covers yearlong residences that are part of a town or community, including mobile homes and mobile home parks. The improvements are, in most cases, privately owned. Some are federally owned structures under the administrative control of the Forest Service. Community residences are occupied by the owner.

This designation includes isolated homes and other dwellings that serve as a primary place of residence and that are not covered by other designations in this chapter.

2723.51 — Residence, Privately Owned Building

Issue special use authorizations only for existing privately owned, owner-occupied residences. Do not authorize new privately owned residences on NFS lands.

2723.52 — Residence, Federally Owned Building

Authorize use and occupancy of all or part of a federally owned building as a residence when the building would otherwise be unused; the use and occupancy would afford protection to the building; and the Forest Service has no further need for the building and has not yet scheduled it for disposal. Do not authorize the holder of a special use authorization for a federally owned

building used as a residence to lease the building to third parties.

Follow the direction in FSM 6445 for Forest Service employee housing. Do not issue a special use authorization for employee housing.

2723.53 — Residence, Alaska Term Permit Act

This designation covers permits issued under the Alaska Term Permit Act of March 30, 1948 (48 U.S.C. 341), and other laws pertaining to Alaska that cover community residence permits.

The Regional Forester for the Alaska Region issues directive supplements governing use of these additional authorities.

2723.6 — Service Uses

2723.61 — School

This designation covers all forms of educational institutions except observatories, training and demonstration areas, and education centers. These exceptions are covered in FSM 2724.

Consider a land exchange in lieu of issuing a special use authorization for a school. Along with the usual land exchange authorities (FSM 5430), the Sisk Act of December 4, 1967 (16 U.S.C. 484a), provides a mechanism for land exchange if the school district or municipality has an insufficient land base for purposes of an exchange.

2723.62 — Service Building

This designation includes other community service facilities, such as police stations, jails, firehouses, dog pounds, fire towers, and medical offices and centers.

Consider a land exchange in lieu of issuing a special use authorization for a service building. Along with the usual land exchange authorities (FSM 5430), the Sisk Act of December 4, 1967 (16 U.S.C. 484a), provides a mechanism for land exchange if there is an insufficient non-NFS land base for purposes of an exchange.

An interagency or collection agreement may cover the operation and staffing of federally owned fire towers and other improvements used in conjunction with fire management activities.

2723.63 — Hospital or Sanitarium

This designation includes rehabilitation and health treatment centers or camps.

2723.64 — Shelter

This type of use includes bus shelters, waiting sheds, fallout shelters, and other types of shelters for non-recreational purposes. It does not include shelters used for recreational activities. See

FSM 2721 for direction on shelters for recreational purposes.

2723.65 — Mailbox

Use this designation only when a mailbox is not part of another community use.

2723.66 — Parking Lot [Reserved]

2723.67 — Visitor Center or Museum [Reserved]

2723.7 — Encroachment

This category of uses originates from unauthorized occupancy of NFS lands. See FSM 5330 for direction on violations and FSM 5450 and 36 CFR 254.3 if the use involves a title claim or possible sale under the Small Tracts Act (96 Stat. 2535). Special use authorizations do not substitute for judicial resolution of an encroachment. The only valid reasons for issuing a special use authorization for an encroachment include:

1. Providing a mechanism for authorizing temporary use of NFS lands in conjunction with legal action on the encroachment; or
2. Serving as a tool for tracking or managing an encroachment.

The unauthorized use may involve improvements of substantial investment. If the authorized officer determines that the encroachment is not an appropriate use of NFS lands, issue a nonrenewable, nontransferable permit of a duration sufficient only to allow the holder to arrange for removal of the improvements from NFS lands.

If the use is acceptable and would have been authorized under normal circumstances, issue a special use authorization under the designation for that use after a legal settlement is reached (FSM 5330).

2723.71 — Cabin, Invalid Mining Claim

These encroachments arise through the illegal use of buildings originally or ostensibly built for mining purposes under the 1872 Mining Law (30 U.S.C. 21-54). Phase out these uses. Authorize these uses only as an interim measure to resolve the encroachment and ensure that special use authorizations for these uses are of the shortest possible duration. Do not allow reconstruction if fire or some other catastrophic event destroys the structure.

2723.72 — Residence

Most of these encroachments occur through survey errors or improperly marked boundaries. Many may involve title claims. Quite often, only a portion of the structure encroaches on NFS lands. If disposal of the affected NFS lands under the Small Tracts Act (96 Stat. 2535) is not appropriate, the authorized officer, after legal resolution of the claim, may authorize the use until the structure can be relocated. If relocation is not feasible, authorize a reasonable period

of use followed by demolition and removal of the structure.

2723.73 — Other Improvement

These improvements include a variety of uses ranging from domestic water supply pipelines and wells to sheds, barns, and garages. Many of these uses may be inadvertent encroachments. In most situations, the legal settlement of the case provides for relocation of the use onto private land.

The legal action may require the authorized officer to issue a special use authorization for temporary occupancy of NFS lands until the owner can amortize the investment in the structure.

2723.74 — Cabin Predating Alaska National Interest Lands Conservation Act of 1980 [Reserved]

2723.8 — Good Samaritan Search and Recovery Missions

This section addresses the requirements for access to NFS lands for search and recovery missions conducted by good Samaritans. The requirements of this section do not apply to search and rescue missions involving a search for one or more missing individuals believed to be alive at the time the search is initiated. This section does not apply to individuals or entities operating for profit, nor does it apply to search and recovery missions conducted by federal, state, or local law enforcement agencies.

2723.81 — Authority

The principal laws and regulations governing access to NFS lands for good Samaritan search and recovery missions are:

1. Section 9002 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (section 9002 of the Dingell Act), Pub. L. No. 116-9, 43 U.S.C. 1742a. This act establishes criteria for accepting a waiver of liability in lieu of insurance for search and recovery missions conducted by good Samaritans on federal lands.
2. Organic Administration Act, 16 U.S.C. 551. This act authorizes the Forest Service to regulate the use and occupancy of national forests.
3. Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1011(f). This act authorizes the Forest Service to regulate the use and occupancy of national grasslands.
4. Special Uses Regulations, 36 CFR Part 251, Subpart B. These regulations govern issuance of special use authorizations for use and occupancy of NFS lands.

2723.82 — Objective

This section implements the requirements in section 9002 of the Dingell Act regarding access to conduct good Samaritan search and recovery missions on NFS lands.

2723.83 — Policy

It is the policy of the Forest Service to allow good Samaritans to conduct search and recovery missions on NFS lands consistent with section 9002 of the Dingell Act and applicable Forest Service laws and regulations.

2723.84 — Responsibility

2723.84a — Washington Office. Director of Lands and Realty Management

The Washington Office Director of Lands and Realty Management is responsible for the development, issuance, and maintenance of directives implementing section 9002 of the Dingell Act. This includes the development of a standard waiver of liability form that can be accepted in lieu of liability insurance for good Samaritan search and recovery missions conducted on NFS lands.

2723.84b — Authorized Officers

Authorized officers may include Forest or Grassland Supervisors; District Rangers; Station or Institute Directors; and Deputy Station or Deputy Institute Directors.

Authorized officers have the responsibility to:

1. Require good Samaritans to submit a request to carry out a search and recovery mission;
2. Notify good Samaritans of the approval or denial to carry out a search and recovery mission within 48 hours of receipt of the request. In cases where a request is denied, notify the good Samaritan of:
 - a. The reason for the denial of the request; and
 - b. Any actions that the eligible organization or individual can take to meet the requirement for the request to be approved;
3. Require a good Samaritan to sign the standard waiver of liability for good Samaritan search and recovery missions without modifications, additions, or deletions (sec. 2723.86, ex. 01) to qualify for a waiver of the special use authorization requirement (sec. 2723.86);
4. Develop partnerships with search and recovery organizations to:
 - a. Coordinate search and recovery missions on NFS lands; and
 - b. Expedite and accelerate good Samaritan search and recovery missions for missing

individuals on NFS lands; and

5. If a proposal or modified proposal for a good Samaritan search and recovery mission does not qualify for a waiver of the special use authorization requirement, screen the proposal and evaluate an application for the search and recovery mission. The authorized officer shall conduct the requisite environmental analysis and ensure that the applicant has signed the standard waiver of liability form or has obtained sufficient commercial general liability insurance for the search and recovery mission (sec. 2723.87b).

2723.85 — Definitions

Good Samaritan. An organization or individual who conducts or has proposed to conduct a search and recovery mission in a not-for-profit capacity and, in the case of an organization, is composed entirely of members who at the time of the mission have attained the age of majority under the law of the State where the mission takes place.

Search and Recovery Mission. A search for one or more missing individuals believed to be deceased at the time the search is initiated.

2723.86 — Proposals for Good Samaritan Search and Recovery Missions

The authorized officer shall not require the applicant for a good Samaritan search and recovery mission to obtain liability insurance as a condition of accessing NFS lands if the applicant has signed the standard waiver of liability form for good Samaritan search and recovery missions conducted on NFS lands without making any modifications, additions, or deletions to the form.

The authorized officer shall ensure the applicant for a good Samaritan search and recovery mission submit a special use proposal under 36 CFR 251.54 that includes a signed standard waiver of liability form for good Samaritan search and recovery missions without any modifications, additions, or deletions (sec. 2723.86, ex. 01) or a statement indicating that the applicant will not sign the standard waiver of liability form. All participants in an organization involved in a good Samaritan search and recovery mission shall sign their own waiver.

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Effective date: December 14, 2023
2723.86 — Exhibit 1

**Standard Waiver of Liability Form for Good Samaritan Search and Recovery Missions
Conducted on NFS Lands**

FS-2700-40 (VER. xx/xx)
OMB 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

**ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT FOR
GOOD SAMARITAN SEARCH AND RECOVERY MISSIONS**

<USER NOTES FOR FORM FS-2700-40>
<Do not make any modifications, additions or deletions to this form.>
<Delete user notes prior to printing.>

AUTHORITY:
Section 9002 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act,
Pub. L. No. 116-9, 43 U.S.C. 1742a

The undersigned good Samaritan, Gifford Pinchot, has made a voluntary request to conduct a search on National Forest System (NFS) lands for one or more missing individuals believed to be deceased (hereinafter “search and recovery mission”).

Name of Missing Person or Persons: Lisa Laurel

Starting Date of Search and Recovery Mission: August 7, 2023

Anticipated Ending Date of Search and Recovery Mission: August 8, 2023

Assumption of Risk

The undersigned is aware that a search and recovery mission is inherently dangerous and that the undersigned may be subjected to the risk of death, personal injury, or damage to the undersigned’s property by undertaking such a mission on NFS lands. The undersigned voluntarily assumes the risk of death, personal injury, and property damage arising from or in any way connected with the undersigned’s search and recovery mission on NFS lands, including but not limited to death, personal injury, and property damage caused by uneven terrain, exposure, heat stroke, rockslides, avalanches, encounters with wildlife, or wildfire. The

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undersigned acknowledges that the undersigned possesses the requisite knowledge, skills, and training to successfully execute a search and recovery mission on NFS lands despite its inherent risks.

Waiver of Liability

The undersigned hereby agrees that the United States and its officers, agents, and employees shall not be liable to the undersigned or the undersigned's estate, heirs, or assignees for the death of, personal injury to, or property damage sustained by the undersigned as a result of negligence of an officer, agent, or employee of the United States in connection with conducting a search and recovery mission on NFS lands. The undersigned hereby waives any negligence claims the undersigned or the undersigned's estate, heirs, or assignees may have against the United States and its officers, agents, and employees for the death of, personal injury to, or property damage sustained by the undersigned in connection with conducting a search and recovery mission on NFS lands.

Indemnification, Hold Harmless, and Duty to Defend

The undersigned and the undersigned's estate, heirs, and assignees shall indemnify, hold harmless, and defend the United States and its officers, agents, and employees for any injury, loss, or damage the United States may suffer as a result of claims, demands, losses, or judgments, other than those caused by the negligence of the United States or its officers, agents, or employees, arising in connection with the undersigned's search and recovery mission conducted on NFS lands.

Legal Status of the Undersigned

The undersigned agrees that (1) the undersigned is acting for private purposes and shall not be considered to be a USDA Forest Service volunteer; (2) the undersigned shall not be considered to be a volunteer under 54 U.S.C. 102301(c); (3) the Federal Tort Claims Act, 28 U.S.C. chapter 171, shall not apply to the undersigned in connection with the undersigned's search and recovery mission on NFS lands; and (4) the Federal Employees Compensation Act, 5 U.S.C. chapter 81, shall not apply to the undersigned in connection with the undersigned's search and recovery mission on NFS lands, nor shall the conduct of the undersigned's search and recovery mission constitute civilian employment.

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THE UNDERSIGNED MUST COMPLETE THE FOLLOWING IN THE UNDERSIGNED'S OWN HANDWRITING:

Have you read this form in its entirety?	Yes	No
Are you or your organization acting in a not-for-profit capacity?	Yes	No
Have you attained the age of majority under the law in the State where the search and recovery mission is to take place?	Yes	No
Are you aware that by signing this form you are agreeing (1) to assume all risk of death, personal injury, and property damage, (2) to waive all claims against the United States for negligence, and (3) to pay the cost of defending the United States in any lawsuit and to pay any damages incurred by the United States in any lawsuit, other than those caused by the negligence of the United States, arising in connection with your conducting a search and recovery mission on NFS lands?		
Yes No		

/s/
Gifford Pinchot

August 7, 2023
Date

Smokey Bear
[name and title of
Forest Service witness]

August 7, 2023
Date

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. Response to this collection of information is mandatory. The authority to collect the information is the Organic Administration Act, 16 U.S.C. 551. The time required to complete this information collection is estimated to average .25 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (such as, Braille, large print, audiotape, American Sign Language, and so forth) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at

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(800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

The Privacy Act of 1974, 5 U.S.C. 552a, and the Freedom of Information Act, 5 U.S.C. 552, govern the confidentiality to be provided for information received by the Forest Service.

2723.87 — Response to Proposals for Good Samaritan Search and Recovery Missions

The authorized officer shall determine whether the proposal qualifies for a waiver of the special use authorization requirement in 36 CFR 251.50(a) before screening a proposal for a good Samaritan search and recovery mission.

2723.87a — Eligibility for a Waiver of the Special Use Authorization Requirement

1. The authorized officer shall determine whether the proposal qualifies for a waiver of the special use authorization requirement under 36 CFR 251.50(e)(1), based on nominal effects, before screening a proposal for a good Samaritan search and recovery mission, and within 48 hours of receipt of the proposal. The authorized officer shall ensure that the proponent submits a signed standard waiver of liability for good Samaritan search and recovery missions without any modifications, additions, or deletions (sec. 2723.86, ex. 1) at a minimum, to qualify for the waiver.
2. If the proposal qualifies for a waiver of the special use authorization requirement, the authorized officer shall notify the proponent in writing that the good Samaritan search and recovery mission can be conducted without a special use authorization.
3. If the proposal does not qualify for a waiver of the special use authorization requirement, the authorized officer shall:
 - a. Notify the proponent in writing of the reasons why, including any modifications to the proposal the proponent could make to qualify for the waiver, and request any modifications to the proposal within 72 hours;
 - b. If the proponent submits a modified proposal, determine within 48 hours of receipt whether it qualifies for the waiver; and
 - c. If the modified proposal qualifies for the waiver, notify the proponent in writing that the good Samaritan search and recovery mission can be conducted without a special

use authorization.

2723.87b — Screening of Proposals and Evaluation of Applications for Good Samaritan Search and Recovery Missions

If the proponent does not submit a modified proposal within the specified timeframe or if the modified proposal submitted by the proponent does not qualify for a waiver of the special use authorization requirement, the authorized officer shall:

1. Inform the proponent in writing that the original or modified proposal will be screened under 36 CFR 251.54(e)(1) and (e)(5);
2. Screen the proposal and notify the proponent in writing whether the proposal passes screening;
3. If the proposal passes screening, process the proposal as an application under 36 CFR 251.54(g)(2) and (g)(4);
4. Conduct the requisite environmental analysis of the application, including assessing whether it qualifies for a categorical exclusion from documentation in an environmental assessment or environmental impact statement (36 CFR 220.6);
5. Not approve the application unless the proponent signs the standard waiver of liability form for good Samaritan search and recovery missions conducted on NFS lands without modifications, additions, or deletions (sec. 2723.86, ex. 1) or obtains commercial general liability insurance naming the USDA Forest Service as an additional insured and providing for a sufficient amount of liability coverage (FSM 2713.1);
6. Notify the proponent in writing whether the application is approved or denied;
7. If the application is denied, specify the reasons for the denial; and
8. If the application is granted, issue a special use authorization for the good Samaritan search and recovery mission using the Temporary Special Use Permit Form, FS-2700-25.

2723.88 — Legal Status of a Good Samaritan Conducting a Search and Recovery

Mission on NFS Lands

1. Good Samaritans who conduct search and recovery missions on NFS lands:
 - a. Act for private purposes;
 - b. Are not considered Forest Service volunteers under 16 U.S.C. 558(a) through 558(d); and
 - c. Are not considered volunteers under 54 U.S.C. 102301(c).
2. The Federal Tort Claims Act, 28 U.S.C. Chapter 171, does not apply to good Samaritans engaged in search and recovery missions.

3. The Federal Employees Compensation Act, 5 U.S.C., Chapter 81, does not apply to good Samaritans engaged in search and recovery missions. A good Samaritan search and recovery mission does not constitute civilian employment.

2723.9 — Leasing Forest Service Administrative Sites

This designation includes leasing of Forest Service administrative sites under section 8623 of the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) or under the Forest Service Facility Realignment and Enhancement Act of 2005 (FSFREA). The leasing authority in FSFREA and section 8623 of the 2018 Farm Bill is not identical. The authority in one statute cannot be mixed with the authority in the other statute. See FSM 2750 for more direction on leasing Forest Service administrative sites under FSFREA or section 8623 of the 2018 Farm Bill.

2724 — Feasibility, Research, Training, Cultural Resources and Historical

2724.1 — Feasibility

2724.11 — Site Survey and Testing

This designation includes a variety of preliminary studies to determine if a particular area is suitable for a proposed use, not merely for research purposes. It may include land surveys, geological investigations, excavation and core drilling, and other activities.

Because of the different objectives involved, issue special use authorizations involving site survey and testing under this designation rather than under the designation for the proposed use. This avoids including terms in the special use authorization that apply only to the proposed use and not to the feasibility determination itself.

2724.12 — Resource Survey

A resource survey determines if a certain resource exists and, for some resources, is of a sufficient quality or quantity to be put to some use. The goal for most of these studies is not to issue a special use authorization, but to issue some other authorization for use of the resource or merely for determining its existence. Examples of resource surveys include wildlife or insect population measurements and sampling to determine quality and quantity of forest products, such as pitchwood (stumps) or pulpwood.

This type of feasibility designation includes operations to determine if a particular location is suitable for a proposed use. A resource survey may consist of verifying elevations and boundaries or geological testing to check the subsurface area for strength in supporting foundations. A typical project may involve several feasibility tests over multiple years that may result in issuance of a special use authorization for construction and use of improvements on NFS lands. Examples include dam and reservoir projects, major powerline facilities, and electronic sites. Include non-intrusive surveys and testing for formerly used defense sites

projects in this use designation.

2724.13 — Hydroelectric Investigation

Hydroelectric investigations use short-term occupancy of NFS lands to determine the feasibility of the site to produce hydroelectric energy. Authorization of temporary structures for several years, such as minor dams and weirs and water flow devices, may be appropriate to determine feasibility. Resource surveys to determine the quantity and quality of other resources which may be affected can be authorized under a special use authorization for a hydroelectric investigation if the resource surveys and hydroelectric investigation are conducted by the same entity. The information gathered under this use designation would be used by a potential applicant for a hydroelectric power plant and by the authorized officer in conducting associated environmental analysis.

2724.14 — Wind Energy Testing

Wind energy testing involves the short-term occupancy of NFS lands to determine the feasibility of the site to produce wind energy. Authorization of temporary structures, such as meteorological towers and anemometers, for several years may be appropriate to determine feasibility. Resource surveys to determine the quantity and quality of other resources which may be affected by wind energy facilities and soil and geological sampling for wind turbine foundations may be authorized under a special use authorization for wind energy testing if the resource surveys and wind energy testing are conducted by the same entity. The information gathered under this use designation would be used by a potential applicant for a wind energy facility and by the authorized officer in conducting associated environmental analysis.

2724.15 — Solar Energy Testing

Solar energy testing involves the short-term occupancy of NFS lands to determine the feasibility of the site to produce solar energy.

Solar energy facilities may not be as dependent on NFS lands as other energy sources. Consider authorizing solar energy testing only when non-NFS lands are not available. Authorization of temporary structures for several years to measure and monitor cumulative solar energy may be appropriate to determine feasibility. Resource surveys to determine the quantity and quality of other resources which may be affected may be authorized under a special use authorization for solar energy testing if the resource surveys and solar energy testing are conducted by the same entity. The information gathered under this use designation would be used by a potential applicant for a solar energy facility and by the authorized officer in conducting associated environmental analysis.

2724.16 — Geothermal Energy Testing

Geothermal energy testing involves the short-term occupancy of NFS lands to determine the feasibility of the site to produce geothermal energy. Authorization of temporary structures for

several years to measure and monitor geothermal characteristics and flow may be appropriate to determine feasibility. Resource surveys to determine the quantity and quality of other resources which may be affected may be authorized under a special use authorization for geothermal energy testing if the resource surveys and geothermal energy testing are conducted by the same entity. The information gathered under this use designation would be used by a potential applicant for a geothermal collection structure for off-site production or for a geothermal power facility on NFS lands and by the authorized officer in conducting associated environmental analysis.

2724.17 — Biomass Testing [Reserved]

2724.2 — Research

This category includes experimental forest demonstration areas, locations for naval stores, observatories, laboratories, stream gages, weather stations, cloud seeding devices, and similar uses not intended to result in further development. If the use involves telemetry equipment, consider issuing the authorization as an electronic use rather than as a research use (FSM 2728.1).

2724.21 — Experimental and Demonstration

Uses under this designation generally consist of temporary or permanent sites for monitoring of or modifications to the area or to a particular resource. Activities are not related to Forest Service projects. The emphasis is on experimentation rather than on monitoring alone.

2724.22 — Research Study

These are nonspecific studies for a wide range of academic interests. Issue special use authorizations under this designation for that do not fit under other designations in this section.

2724.23 — Weather Station

This designation includes sites used to install equipment to monitor weather conditions. Typical equipment consists of anemometers, rain gauges, and thermographs.

2724.24 — Weather Modification Device

This designation covers only ground-based equipment, such as certain silver iodide generators used for cloud seeding. Aircraft projects or private, land-based facilities designed to modify weather over NFS lands do not require a special use authorization. However, an agreement to protect the public interest is recommended (FSM 1580).

2724.25 — Observatory

This designation includes structures designed for studies of extraterrestrial phenomena. Typically, these structures are at a high elevation and in a remote area to allow for optimum collection of information. Remote locations are needed to avoid problems caused by smoke, smog, light, or electrical interference from population centers, which may tend to preclude other land uses in areas adjacent to the observatory. Consider authorizing radio telescope observatories as an electronic use rather than as this type of use.

2724.3 — Training

2724.31 — Military Training Area

This designation is limited to federal and state military training activities and sites. Private organizations or individuals may not use NFS lands for military or para-military exercises. This type of use is often potentially damaging to NFS resources and may endanger other NFS users. See FSM 1530 for a list of agreements with defense agencies. Refer to these agreements for the coordination necessary for this type of use.

Adventure games (sometimes called war or survival games) may be authorized and should be classified as a recreational activity and authorized as a recreation event (FSM 2721.81).

2724.32 — Educational Center

This designation covers educational facilities that are not part of a community school system. See FSM 2723.6 for direction on special use authorizations for schools. Education centers often need to conduct portions of their educational programs in a forested or wildland environment. Examples include centers that teach conservation subjects to students and training areas for foresters, engineers, geologists, and botanists. This designation does not include facilities primarily used for recreational activities and programs. See FSM 2721 for recreation uses. Issue special use authorizations for education centers under this designation when suitable private land is unavailable.

2724.4 — Cultural Resource or Treasure Trove

This category includes inventory, excavation, or removal of archaeological resources and treasure troves.

The Antiquities Act of June 8, 1906 (16 U.S.C. 431) authorizes issuance of most of the existing cultural resource special use permits issued prior to 1979 and all cultural and historical resources less than 100 years old. The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa) authorizes issuance of all new special use permits involving land-disturbing cultural resource activity involving resources 100 years old or more. The Act of June 4, 1897 (16 U.S.C. 551) authorizes issuance of special use permits for non-disturbing activities and treasure troves.

Allow qualified institutions and individuals to observe, excavate, or remove archaeological resources on NFS lands when in the public interest and consistent with applicable laws and regulations governing the management of archaeological and other natural resources.

For treasure troves, allow persons to search for buried treasure on NFS lands, but protect the rights of the public regarding ownership of or claims on any recovered property.

Follow the direction for cultural resource activities on NFS lands in FSM 2360 and associated requirements for historic preservation in 36 CFR Part 800. A special use permit is required for all activities involving disturbance of cultural resources except for those conducted under contract with the Forest Service or conducted by or under the direct supervision of Forest Service staff archaeologists.

Assess whether a cultural resource special use authorization is required for activities that only incidentally result in disturbance of cultural resources. Other exceptions to the requirement for a cultural resource special use authorization are enumerated in 36 CFR 296.5.

The definitions of words and phrases used in this section are found in 36 CFR 296.3.

Terminology related to cultural resources is also found in FSM 2360. The following additional definitions relate specifically to direction on special use authorizations for cultural resource activities:

1. **Academic Activity.** Cultural resource activity that is research-oriented and usually performed through an institution of higher learning.
2. **Blanket Permits.** Permits that authorize qualified applicants to conduct examinations of cultural resources on broad geographical areas, such as a national forest or state. Such permits are an administrative convenience and may serve as a form of certification of the applicant's qualification.
3. **Consulting Activity.** Activity that is project-oriented, but not necessarily site-specific. Often, projects are related to non-Forest Service proposals for use of NFS lands.
4. **Disturbing Examination.** An activity that may alter or deplete the cultural resource under study. Individuals collect and remove archaeological or historical specimens. The ground may be disturbed.
5. **Limited Testing.** A preliminary survey or discovery technique, causing minimal ground disturbance, to determine the existence or significance of sites. Limited testing, as defined by the regional archeologist, may consist of shovel tests to determine if stratigraphy is present, minimal subsurface probe or auger sampling, or removal of vegetative cover and organic matter on a small area. For the purposes of the permitting process, consider limited testing as non-disturbing.
6. **Non-Disturbing Examination.** Data collection activities that do not alter or deplete the cultural resource under study. There is no collection of archaeological or historical specimens and little or no ground disturbance. These activities include architectural drawing or photography, applying remote sensing techniques to surface or subsurface

examinations, locating, describing, and documenting cultural resources during field inventory, and limited testing.

7. **Qualified Applicant.** Any individual or organization that meets the requirements for an application in 36 CFR 296.6.
8. **Treasure Trove.** A valuable quantity of money, unmounted gems, or precious worked metal in the form of coins, plate, or bullion of unknown ownership, purposely hidden, that does not fall under any of the definitions in 36 CFR 296.3.

2724.41 — 1906 Act Permit

Regulations governing the administration of these permits are found at 36 CFR Part 296 and 43 CFR Part 3. Do not issue new permits under this authority for activities concerning cultural resources that are 100 years old or more. Reauthorize cultural resource activities only under the authority of the Act of 1979 if the resource involved is 100 years old or more.

2724.42 — Non-Disturbing Use

This designation is appropriate for authorizing an individual or institution to conduct non-site-specific activities over a large area. Prior to issuing cultural resource permits for non-disturbing uses, the authorized officer shall consult with and obtain documented recommendations from a Forest Service cultural resource specialist with qualifications equivalent to the training and experience required of an applicant as specified in 36 CFR 296.8(a)(1). Issue cultural resource permits for non-disturbing uses under the Organic Administration Act to qualified applicants. Consulting or academic activities, but not both, may be authorized under a cultural resource permit for non-disturbing uses.

Do not authorize collection, excavation, or any other form of recovery beyond limited testing or recording of a site's location and characteristics.

2724.43 — Disturbing Use

Issue permits for land-disturbing cultural resource activities under the authority of the Act of 1979 if the cultural resources are 100 years old or more. Regulations at 36 CFR Part 296 provide detailed information on cultural resource permit application, issuance, and administration, including instructions on Tribal notification, qualifications of applicants, reclamation, handling of artifacts, safeguarding of archaeological sites and resources, and penalties for noncompliance.

2724.44 — Treasure Hunting

This designation includes the search for and recovery of hidden treasure. It does not include:

1. Lost or abandoned property that falls under the General Services Administration's authority in 40 U.S.C. 310.

2. Archaeological resources or specimens, as defined in 36 CFR Part 296.
3. Locatable minerals subject to the 1872 Mining Act (30 U.S.C. 21-54), or leasable minerals subject to the Act of 1920 (30 U.S.C. 181) or the Act of 1947 (30 U.S.C. 351-359).
4. Recent vintage coins or other small objects of recent age often found with the aid of a metal detector. No significant excavation is involved. The search is a recreational pursuit confined to areas with no historical or prehistorical value.

2724.44a — Ownership of Treasure Trove

A treasure trove permit does not establish ownership of any treasure trove found while conducting a search under the permit; the permit only authorizes the search for treasure trove. In the event the holder finds treasure trove, its ownership is case by case under applicable law. Several factors influence the ownership determination. These may include the following:

1. Archaeological resources remain the property of the United States.
2. The true owner of the trove may come forward.
3. The Forest Service cannot determine the tax aspects or interests of other federal agencies.
4. Resolution may include negotiation between the finder and the United States as landowner for any nonarchaeological portion of the treasure trove.

Treasure trove permits may provide only for search for treasure trove and, if there is a discovery, for removal of the treasure trove to a repository for safekeeping until a determination of ownership can be made. The recovered treasure trove must remain in escrow for 1 year to allow all claimants to come forward and to reach a legally acceptable settlement.

2724.44b — Relation to Mining Claims

A treasure trove search under the guise of prospecting or mining is a trespass (FSM 5330). A treasure trove found on an unpatented mining claim, even if the claim has prospective value under the 1872 Mining Act (30 U.S.C. 21-54), does not automatically become the property of the mineral claimant. The United States owns the land, and ownership of the treasure trove is determined in accordance with FSM 2724.44a.

2724.5 — Historical [Reserved]

2724.51 — Historical Building and Improvement [Reserved]

2724.52 - Historical Site [Reserved]

2725 — Industry

This designation includes compatible uses of NFS lands for a variety of forest-related industrial activities. Issue authorizations for these uses only when suitable private land is not readily available.

2725.1 — Camps

2725.11 — Construction Camp, Cabin, or Residence

This designation includes camps, cabins, or residences to house personnel employed in road construction, logging, and other industries. The designation also includes prison camps. These uses range from seasonal or temporary to permanent.

Authorize this type of use under the same special use authorization as the associated industrial use, whenever possible. Do not authorize any facilities for summer homes, hunting lodges, or clubhouses for employees.

2725.12 — Temporary Construction Activities [Reserved]

2725.2 — Storage

This designation covers the storage of timber and timber products, fuel, sand and gravel, ore, construction supplies, materials, equipment, state highway department sheds and storage, and storage of other similar items that are not included under another designation. This designation does not include unrefined oil or gas storage. See FSM 2726.33 for direction on administering special use authorizations for unrefined oil or gas storage.

Waive land use fees under 36 CFR 251.57 if the storage is associated with a federal contract that includes use of NFS lands as a bid item or if the storage involves highway maintenance.

2725.21 — Warehouse and Storage Yard

This designation includes storage areas with some constructed improvements. The stored items usually consist of equipment and materials.

2725.22 — Stockpile Site

Sites included in this designation do not have any significant improvements associated with the storage. Stored items, such as sand and gravel, are usually in bulk.

2725.23 — Storage and Use of Explosives and Magazine Security

This designation includes sites where the storage and use of explosives are authorized. Assign use code 523 when the storage and use of explosives are the primary uses. When the storage and use of explosives are secondary to another use, such as construction, avalanche mitigation,

or commercial filming, authorize the storage and use of explosives under the appropriate authorization and use code for the primary use.

Include clause B-29, Storage and Use of Explosives and Magazine Security, in all authorizations authorizing the storage and use of explosives (FSH 2709.11, ch. 50, sec. 52.2). See FSM 2719 for direction on special use authorizations involving the storage and use of explosives and magazine security.

Authorize the storage and use of explosives under the Organic Administration Act using form FS-2700-4 for a term of up to 20 years.

No permit for the storage and use of explosives may be issued unless the permit administrator has taken AgLearn Course FS2700-301, Authorizing Explosives for Special Uses, or a successor course.

2725.3 — Manufacturing

2725.31 — Processing Plant

This designation includes buildings and other structures needed for the manufacture or packaging of a product. Examples include canning and packing plants, factories, and sawmills.

2725.32 — Truck and Equipment Depot

This designation includes facilities for loading, unloading, and maintenance of vehicles and equipment, not merely storage.

2725.33 — Batch and Mixing Plant

This designation includes facilities for preparation of road construction materials that are usually needed on a short-term basis.

2725.4 — Measurement

2725.41 — Weighing or Scaling Station

This designation includes sites used for weighing gravel, stone, timber products, and other materials and facilities used for scaling timber and timber products. The use may be temporary or permanent. Portable scaling platforms owned by the Forest Service and used by private scaling organizations require a special use authorization under this designation.

2725.5 — Arts

2725.51 — Still Photography

This designation includes taking still images under certain circumstances specified by statute where the activity may have adverse impacts on NFS resources. This designation does not

include commercial filming (FSM 2725.52).

Direction on land use fee administration for still photography is found at FSH 2709.11, chapter 30, and direction on still photography permit administration is found at FSH 2709.11, chapter 40.

2725.52 — Commercial Filming

This designation includes creation of a moving image for commercial purposes, such as filming for motion pictures, documentaries, sports events, entertainment specials, and advertising. This designation does not include still photography (FSM 2725.51).

Coordinate authorization of these uses with the Office of Communication in the Washington Office. See FSM 1650 for further direction on coordination with the Office of Communication.

Direction on land use fee administration for commercial filming is found at FSH 2709.11, chapter 30, and direction on commercial filming permit administration is found in FSH 2709.11, chapter 40.

2725.6 — Mineral Exploration

For direction on special use authorizations for mineral exploration, see FSH 2709.11, chapter 40, section 45.6.

2725.61 — Geological and Geophysical Exploration

For direction on special use authorizations for geological and geophysical exploration, see FSH 2709.11, chapter 40, section 45.61.

2725.62 — Mineral Material Sale [Reserved]

2725.7 — Mineral Development [Reserved]

2725.71 — Occupancy Permit, Reserved Mineral Right [Reserved]

2725.72 — Occupancy Permit, Outstanding Mineral Right [Reserved]

2725.9 — Timber

This designation covers temporary access across NFS lands to enable timber operators to log private land. Consider the need and potential for obtaining a reciprocal right-of-way on the associated private land when issuing a permit for this type of use.

2725.91 — Tailhold

Use this designation for areas used to locate tailholds for cable or skyline logging systems. Authorize sufficient area to provide for access to the tailhold.

2725.92 — Spar

Use this designation for areas used to locate spars for cable or skyline logging systems. Authorize sufficient area to provide for access to the spar.

2725.93 — Log Landing

This designation includes locations for the temporary storage of recently cut timber at a timber harvest. Do not use this designation for other types of storage facilities, which are covered in FSM 2725.2. Log landings are integral to timber harvest operations.

2725.94 — Yarding Corridor

This designation includes cableways and skid roads used to move logs from a timber harvest area to a log landing area.

2725.95 — Flume or Log Chute

This designation includes devices used to move logs from a timber harvest area to a log landing area by means of water flow or gravity. Use of water is for timber harvesting, not transportation.

2726 — Energy Generation and Transmission

2726.01 — Authority

2726.01a — Wind Energy Facilities

Section 501(a)(4) of FLMPA, 43 U.S.C. 1761(a)(4) (see FSM 2701.1, para. 15).

2726.02 — Objectives

2726.02a — Wind Energy Facilities

The Forest Service's objectives for wind energy facilities include:

1. Authorizing wind energy facilities on NFS lands to help meet the United States' energy needs.
2. Authorizing wind energy facilities on NFS lands so as to minimize detrimental social and environmental impacts, including direct, indirect and cumulative impacts.
3. Facilitating wind energy development when it is consistent with managing NFS lands to sustain the multiple uses of its renewable resources while maintaining the long-term productivity of the land.
4. Authorizing, to the extent practicable, wind energy facilities that do not preclude other

land uses and associated benefits.

5. Considering, in siting wind energy facilities, unique local factors, such as differing landscapes, habitats, species of management concern, and public concerns. See FSH 2709.11, chapter 70, section 72.21, for further direction on siting wind energy facilities.

2726.02b — Power Plants Under the Jurisdiction of the Federal Energy Regulatory

Commission (FERC) [Reserved]

2726.02c — Other Power Plants

2726.04 — Responsibility

2726.04a — Chief

Wind Energy.

See 36 CFR 251.52 for delegation of authority from the Chief to Regional Foresters, Forest Supervisors, and District Rangers for issuance and administration of wind energy permits.

2726.04b — Regional Foresters

Regional Foresters are responsible for:

Wind Energy.

1. Approving wind energy study plans, plans of development, site plans, and operating plans.
2. Issuing site testing and feasibility permits and permits for construction and operation of a wind energy facility in accordance with the provisions of the applicable study plan, plan of development, site plan, and operating plan.
3. Determining the appropriate environmental analysis for wind energy facilities.
4. Delegating these responsibilities to Forest Supervisors as provided in FSM 2704.33.

2726.04c — Forest Supervisors

Wind Energy.

Forest Supervisors may be delegated authority to issue site testing and feasibility permits and permits for construction and operation of wind energy facilities. This authority may not be redelegated.

2726.1 — Power Plants Under FERC's Jurisdiction

2726.11 — Hydroelectric Facilities Licensed by FERC

This designation includes hydroelectric facilities licensed by FERC. See FSM 2770 for direction on these facilities.

2726.12 — Hydroelectric Facilities That Are Not Licensed by FERC

This designation includes hydroelectric facilities that are exempt from licensing by FERC. See FSM 2770 for further direction on these facilities.

2726.2 — Other Power-Generating Facilities

2726.21 — Wind Energy Facilities

This designation includes only facilities using wind to generate electric power. For further direction on these facilities, see FSH 2709.11, chapter 70. Issue special use authorizations for other wind-driven facilities, such as pumps or mills, with use code 931 as applicable.

2726.21a — Proposals

1. Early in the planning process, require a proponent of a wind energy facility on NFS lands to coordinate with appropriate state and local agencies, federal agencies, including the United States Departments of Defense and Homeland Security, National Weather Service, Federal Aviation Administration, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Tribal governments.
2. Proposals for site testing and feasibility and wind energy facilities must be evaluated and processed in accordance with 36 CFR 251.54 and cost recovery regulations at 36 CFR 251.58.

2726.21b — Land Use Fees

Calculate land use fees for wind energy permits in accordance with FSH 2709.11, chapter 70, section 76.

2726.21c — Ancillary Facilities

1. Authorize under a permit for the construction and operation of a wind energy facility any privately owned access roads, transmission lines, and other ancillary improvements for the facility that are constructed and maintained by the holder of the wind energy facility permit.
2. Authorize under a separate special use authorization any privately owned access roads, transmission lines, and other ancillary improvements for a wind energy facility that are

not constructed and maintained by the holder of the wind energy facility permit.

2726.21d — Monitoring Plans, Plans of Development, and Site Plans

1. Ensure that proponents for a wind energy facility develop a monitoring plan in accordance with the requirements in FSH 2609.13, chapter 80, and FSH 2709.11, chapter 70, and that mitigation measures identified during environmental analysis and incorporated into the NEPA decision document for the wind energy facility are contained in the permit and annual operating plan for the facility.
2. Ensure that plans of development and site plans (FSH 2709.11, ch. 70, sec. 73.32 and 73.33) address site-specific and species-specific concerns to ensure that potential adverse impacts of wind energy development are prevented or minimized.

2726.22 — Fossil Fuel Power Plant

This designation includes coal-fired and oil or gas-fueled electric generating stations. These types of power plants generally are not compatible with NFS lands.

Issue a special use authorization for this use only if private land is not available and only if adverse impacts on NFS lands can be minimized.

2726.23 — Solar Energy Facility

This designation includes only commercial facilities that generate electricity using solar energy. Solar energy facilities generally are not suitable for NFS lands. Issue a special use authorization for this use only if non-NFS lands are not available and only if adverse impacts on NFS lands can be minimized. Solar panels used to generate electricity for a primary use such as a communications facility, dwelling, or natural resource monitoring facility must be authorized as an ancillary facility under the special use authorization for the primary use.

2726.24 — Geothermal Energy Facility

This designation includes only commercial facilities that generate electricity using geothermal energy. These types of power plants may not be suitable for NFS lands. Issue a special use authorization for this use only if it is not feasible to transmit geothermal water to a power-generating facility on non-NFS lands and only if adverse impacts on NFS lands can be minimized.

2726.25 — Biomass Energy Facility [Reserved]

2726.3 — Oil and Gas Development

2726.31 — Oil or Gas Pipeline

See FSM 2726.34 for additional direction concerning interstate natural gas pipelines under FERC's jurisdiction.

1. The authority for issuing authorizations to non-federal entities for oil and gas pipelines is section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185). If a federal agency applies for this type of use, FLPMA is the proper authority for issuance of a special use authorization. The designation includes only pipelines and directly related facilities for the transportation of oil, natural gas, synthetic liquid or gaseous fuel, and any refined product produced from those sources.
2. The Forest Service has the authority to issue a special use authorization for an oil or gas pipeline under section 28 of the Mineral Leasing Act only if NFS lands are the only federal lands crossed by the oil or gas pipeline.
3. Applications and authorizations for new pipelines 24 inches or more in diameter are subject to review by the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources (30 U.S.C. 185(w)(2)).
 - a. Before an authorization for a new pipeline 24 inches or more in diameter is issued, provide a copy of the application and authorization for the pipeline to the Washington Office Lands and Realty Management staff for review by the Chief and submission to the relevant Congressional committees.
 - b. Do not submit an amendment to an authorization or an application and new authorization for an existing pipeline 24 inches or more in diameter unless the amendment or application and new authorization involve significant modifications. A significant modification is any action that would result in a greater allocation of NFS lands or pipeline capacity.
4. The Bureau of Land Management (BLM) has the authority under section 28 of the Mineral Leasing Act to issue the authorization for an oil or gas pipeline that crosses NFS lands, as well as lands managed by another Federal agency. In this instance, the BLM issues the authorization after concurrence from the Forest Service. The Forest Service may require that the authorization include terms necessary to ensure that the authorized use will not be inconsistent with NFS purposes. The Forest Service also may recommend inclusion of other appropriate terms. Per 43 CFR 2884.26, the Forest Service also may refuse to concur if the authorized use would be inconsistent with NFS purposes. Any disputes between the two agencies regarding an oil or gas pipeline authorization shall be resolved through appropriate channels. The Forest Service and the BLM may enter into an interagency agreement regarding oil and gas pipeline authorizations to avoid duplication, assign responsibility, expedite review of applications, issue joint regulations, and ensure decisions based on a comprehensive

review of all factors involved in an application (30 U.S.C. 185(c)(2)).

5. Holders of a valid BLM oil or gas lease and operators in a BLM oil or gas unit area do not require a special use authorization for pipelines or facilities associated with pipelines that are located within the lease or unit area, provided the pipelines and associated facilities are used solely for the production or gathering of oil or gas. If the pipelines and related facilities are used for the transportation of oil or gas, whether on-lease or off-lease, the pipeline right-of-way must be issued under section 28 of the Mineral Leasing Act.
6. A supplemental temporary permit may be issued to use NFS lands in the vicinity of an authorized oil or gas pipeline and for purposes deemed necessary for construction, operation, maintenance, or termination of the pipeline; for protection of the natural environment; or for public safety (30 U.S.C. 185(e)).
7. The Forest Service may ratify or confirm an authorization for an existing pipeline issued under any provision of law before November 16, 1973, if the authorization is amended to comply to the extent practicable with section 28 of the Mineral Leasing Act (30 U.S.C. 185(t)). Ratification or confirmation of a pipeline authorization issued before November 16, 1973, shall not constitute a major federal action requiring an environmental impact statement (30 U.S.C. 185(t)).

2726.31a — Applications

See 36 CFR 251.54 for a list of the general and specific qualification requirements for pipeline proponents. If the proponent is a member of a partnership, the information required from the business entities listed in 36 CFR 251.54 also shall apply to that partnership. In addition, pipeline proponents shall submit and disclose all other information as required by the Mineral Leasing Act.

2726.31b — Width of Pipeline Rights-of-Way

1. Pipeline rights-of-way shall not exceed 50 feet plus the ground occupied by the pipeline and its associated facilities, unless the authorized officer records the reasons why a wider right-of-way is necessary for operation and maintenance after construction or for protection of the environment or public safety and shall be only wide enough for efficient operation and maintenance of the pipeline after construction (30 U.S.C. 185(d)). Approve temporary additional widths as necessary during the construction phase for the pipeline.
2. Facilities associated with oil and gas pipelines may include valves, pumping stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips, and campsites (30 U.S.C. 185(d)). Associated facilities need not connect with or be adjacent to the pipeline and may be authorized under the same or a separate authorization. Issue authorizations under authorities

other than section 28 of the Mineral Leasing Act when a proposed use is not a facility associated with an oil or gas pipeline.

2726.31c — Cost Recovery and Land Use Fees

An applicant for an oil or gas pipeline authorization issued by the Forest Service is required to reimburse the Forest Service for the administrative and other costs incurred in processing the application and in monitoring the construction, operation, maintenance, and termination of the authorized pipeline and associated facilities (30 U.S.C. 185(l)). Charge proponents and holders of pipeline authorizations issued by the Forest Service processing and monitoring fees to cover the costs of processing their applications and monitoring compliance with their authorizations in accordance with 36 CFR 251.58 and FSH 2709.11, chapter 20.

The holder of an oil or gas pipeline authorization issued by the Forest Service is required to pay a land use fee based on the fair market value of the use and occupancy of NFS lands (30 U.S.C. 185(l)). Calculate the annual land use fee for oil and gas pipeline authorizations using the linear right-of-way land use fee schedule (FSH 2709.11, ch. 30, sec. 35.41, ex. 1). Bill annual land use fees at least quarterly.

2726.31d — Suspension and Revocation

Suspension or revocation of a pipeline authorization requires an administrative proceeding pursuant to 7 CFR Part 1, Subpart H (30 U.S.C. 185(o)).

2726.31e — Common Carrier Provisions

Pipelines and associated facilities authorized under section 28 of the Mineral Leasing Act are subject to its common carrier provisions (30 U.S.C. 185(r)) and, if domestically produced crude oil is transported, except as otherwise noted, to the export limitations of the Export Administration Act of 1979 (Act of September 29, 1979; Pub. L. No. 96-72; 93 Stat. 503; 50 U.S.C. Appendix 2401). The common carrier provisions in section 28(r) of the Mineral Leasing Act do not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (30 U.S.C. 185(r)(3)(A); 15 U.S.C. 717 *et seq.*) or operated by any public utility subject to regulation by a state or municipal regulatory agency with authority to regulate the rates for the sale of natural gas (FSM 2726.33).

2726.32 — Oil or Gas Production and Storage Area

Authorize oil and gas storage facilities that are not associated with a pipeline under the Organic Administration Act of 1897 (16 U.S.C. 551) or the Term Permit Act of 1915 (16 U.S.C. 497). If the storage use involves a Federally owned structure, section 7 of the Granger-Thye Act of April 24, 1950 (16 U.S.C. 580d) also applies.

Oil and gas storage tank batteries included in this designation usually relate to operation of oil and gas production wells. When these facilities are located on NFS lands leased to the operator

by the BLM, a special use authorization is not necessary.

2726.33 — Natural Gas Pipeline, FERC

1. The Natural Gas Act of June 21, 1938 (15 U.S.C. 717 *et seq.*) authorizes FERC to regulate interstate natural gas pipelines and ensure that the price of gas carried in these pipelines is just and reasonable.
 - a. An applicant for a natural gas pipeline authorization must obtain a certificate of public convenience and necessity from FERC (15 U.S.C. 717f(c)) to be authorized to build or extend an interstate natural gas pipeline. A certificate of public convenience and necessity gives the holder the power of eminent domain (15 U.S.C. 717f(h)) to obtain a right-of-way over non-Federal lands.
 - b. In addition to a certificate of public convenience and necessity, if the natural gas pipeline is to cross NFS lands, the natural gas company also must obtain a right-of-way authorization from the Forest Service, if only NFS lands are involved (FSM 2726.31, para. 2), or the BLM if another Federal agency's lands are also involved (FSM 2726.31, para. 4). A natural gas pipeline authorization is issued under section 28 of the Mineral Leasing Act (FSM 2726.31). Before issuing a natural gas pipeline right-of-way authorization, ensure that the applicant has obtained a certificate of public convenience and necessity from FERC if the pipeline is under the jurisdiction of FERC. If there is any question as to FERC's jurisdiction over a natural gas pipeline, suggest that the applicant petition FERC for a jurisdictional ruling (18 CFR 385.207). If FERC is involved in a natural gas pipeline, FERC usually serves as the lead federal agency for purposes of conducting the requisite environmental analysis because FERC is responsible for determining whether the pipeline is in the public interest and because FERC's certificate of public convenience and necessity gives the applicant certain rights on non-federal lands.
 - c. Early in the application process, request cooperating agency status in connection with the planning, environmental analysis, and other documentation for the proposed pipeline.
 - d. Ensure the environmental analysis is adequate (FSM 1950 and FSH 1909.15) for Forest Service use in issuing an authorization.
 - e. Actively coordinate the environmental analysis and decision with FERC with the goal of having the Forest Service right-of-way decision consistent with FERC's decision.
2. For natural gas pipelines under FERC's jurisdiction:
 - a. The oil and gas pipeline procedures in FSM 2726.31, including Congressional review of applications and authorizations and coordination with the BLM, and the direction in FSM 2726.32 on oil and gas production and storage areas, apply to natural gas pipelines.

- b. As noted in FSM 2726.31e, a pipeline under FERC's jurisdiction is already regulated as a common carrier, so the common carrier provisions in section 28(r) of the Mineral Leasing Act do not apply (30 U.S.C. 185(r)(3)(A)).

2726.33a — Interagency Agreement for Processing Interstate Natural Gas Pipeline Proposals

The United States Department of Agriculture is one of 10 federal departments or agencies that signed the May 2002 Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission, hereinafter "Agreement" (FSM 1537.11). Follow the provisions of the Agreement and administrative procedures in this section when a proposal is submitted to construct an interstate natural gas pipeline on NFS lands that is subject to FERC's jurisdiction under the Natural Gas Act of 1938 (15 U.S.C. 717 *et seq.*).

1. **Objective.** The objective of the Agreement is to encourage concurrent reviews, minimize duplicative processes, and shorten the cumulative processing time in evaluating applications and issuing authorizations for interstate natural gas pipelines.
2. **FERC Filing Procedures.** FERC's Traditional Filing Process and NEPA Pre-Filing Process for responding to applications for interstate natural gas pipeline projects are outlined in schematics at FERC's website, FERC.gov. Proponents may use either of these procedures for a proposed interstate natural gas pipeline. However, FERC is encouraging proponents to use the NEPA Pre-Filing Process, which requires prior approval from FERC. During early discussions about a proposed interstate natural gas pipeline, the appropriate Forest Service official should ask the proponent which of these two procedures the proponent intends to use in filing an application with FERC. This information is useful to the Forest Service in determining when in the process the agency will become involved and in allocating time and resources needed to serve as a cooperating agency, as defined in the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). Additional information about FERC's NEPA Pre-Filing Process is found at FERC's Webpage at <http://www.ferc.gov/help/processes/flow/lng-1-text.asp>.
3. **Proponent Contacts.** A proponent for an interstate natural gas pipeline may contact landowners, Forest Service officials, and other Federal, State, and local governmental officials about the proposed pipeline before contacting FERC about the project. To effectuate the processing efficiencies of the Agreement, the authorized officer should work closely with the proponent during these initial inquiries and be responsive to requests for available information that might benefit the proponent in developing the proposal, such as landownership maps, Forest Service land management plan information (such as maps and potentially applicable standards and guidelines), existing and designated utility corridors, special management area designations or prescriptions, public uses, and other existing special uses that might be affected by the proposed pipeline. The authorized officer should ask the proponent which of the two filing

procedures the proponent intends to use in filing an application with FERC.

4. **FERC as Lead Agency.** FERC shall serve as the lead Federal agency for purposes of complying with NEPA and other applicable laws and regulations for most pipelines subject to the Agreement. When a proponent chooses FERC's Traditional Filing Process, FERC assigns an environmental project manager after the proponent files an application. When a proponent chooses the NEPA Pre-Filing Process, FERC assigns an environmental project manager before the application is filed. Under both the Traditional Filing Process and the NEPA Pre-Filing Process, FERC is responsible for:
 - a. Coordinating cooperating agencies' efforts during consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for compliance with the Endangered Species Act (16 U.S.C. 1531-1536, 1538-1540) and the Magnuson-Stevens Fishery Conservation and Management Act.
 - b. Coordinating cooperating agencies' efforts during compliance with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*), including consultation with the appropriate State Historic Preservation Officer, Tribal Historic Preservation Officer, if applicable, and affected Indian Tribes.
 - c. Identifying the environmental project manager assigned to the application who will act as FERC's primary contact.
 - d. Identifying which of FERC's filing procedures are being used for filing the application.
 - e. Requesting the appropriate Federal agencies to participate in processing the application as cooperating agencies.
 - f. Scheduling a coordination meeting during which FERC, in consultation with the cooperating agencies, shall develop and commit to a schedule for processing the application.
5. **Jurisdiction and Issuance of Authorizations.** As the location and specifications of a proposed interstate natural gas pipeline become more certain, the Forest Service official shall identify and inform the proponent and FERC as to which Federal land management agency is responsible for issuing an authorization for a right-of-way across NFS lands and the name of the authorized officer who has the authority to issue the authorization. This notification is required under both of FERC's application filing procedures.
 - a. **Proposals Involving Lands Managed by More Than One Federal Agency.** The United States Department of the Interior (DOI) is responsible for issuing the right-of-way authorization for interstate natural gas pipelines that cross lands administered by more than one Federal agency. In most cases, this authority has been delegated to the BLM. When a DOI agency is responsible for issuing the right-of-way authorization, the Forest Service shall identify the Forest Service official from the lead Forest Service administrative unit who is responsible during the early coordination stage for working with the appropriate DOI agency to review the application and designate a project manager.

- b. **Proposed Interstate Natural Gas Pipelines Involving No Other Federal Lands Besides NFS Lands.** The Forest Service is responsible for issuing the right-of-way authorization for an interstate natural gas pipeline when no other Federal lands besides NFS lands will be traversed by the pipeline. In this situation, the Forest Service shall notify the proponent of the authorized officer with the delegated authority to issue the authorization for the proposed pipeline. For projects that cross more than one administrative unit in the same region, the authorized officer shall be either the Regional Forester or a Forest Supervisor with delegated authority to act on behalf of all affected administrative units. For interregional projects, the authorized officer shall be a Regional Forester with delegated authority to act on behalf of all affected regions or a Forest Supervisor with delegated authority to act on behalf of all affected regions, consistent with FSM 2704.32. The authorized officer is responsible for requesting that the proponent submit a written proposal for the right-of-way authorization to the Forest Service and working with the proponent to ensure that the proposal is developed so that it may be accepted by the Forest Service and an application for the authorization may be submitted to the Forest Service.
6. **Forest Service Role as a Cooperating Agency.** When notified by FERC that a proposed interstate natural gas pipeline will use and occupy NFS lands, the Forest Service official from the lead Forest Service administrative unit responsible for working with DOI (para. 5a) or the Forest Service official acting as the authorized officer (para. 5b) shall notify FERC by letter that the Forest Service shall:
- a. Coordinate and cooperate with FERC and other cooperating Federal agencies involved in review of the application.
 - b. Assist in development of a single environmental analysis that is adequate in scope to address issues and concerns associated with NFS lands and resources.
 - c. Assist in the development of a detailed schedule that provides sufficient time to:
 - (1) Collect information and complete initial surveys and studies.
 - (2) Solicit and evaluate internal and external comments.
 - (3) Conduct an environmental analysis of the potential impacts associated with construction, operation, maintenance, and termination of the proposed pipeline facilities, including the location of temporary use areas and associated facilities.
 - (4) Review and write reports.
 - (5) Amend or revise the applicable land management plan if necessary to accommodate the proposed pipeline.
 - (6) Respond to and process any pre-decisional objections to and administrative appeals of a Forest Service decision.
 - (7) Prepare the authorization and approve the proposed plan of development

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proposed operating plan, and other documents associated with the authorization.

- d. Provide the name, title, address, telephone number, and email address of the Forest Service official from the lead Forest Service administrative unit responsible for working with DOI (para. 5a) or the Forest Service official acting as the authorized officer (para. 5b) and the project manager or primary point of contact for processing the proposal, if the Forest Service is issuing the right-of-way authorization, and application.
- e. State the Forest Service's intent to recover from the proponent the Agency's processing costs under a cost recovery agreement between the Forest Service and the proponent or a cost recovery agreement between the BLM and the proponent.
- f. If not previously provided, identify readily available land and resource information relative to the proposed interstate natural gas pipeline, including but not limited to:
 - (1) The current Forest Service land management plan's standards and guidelines that may affect the proposed pipeline, including land use allocations, corridor designations in proximity to the proposed pipeline route, and management prescriptions, and other existing studies, data, and information concerning the lands and resources along the proposed pipeline route.
 - (2) The disclosure of existing authorized uses along the proposed pipeline route that could be affected by the proposed pipeline.
 - (3) Actual or anticipated concerns of the Forest Service, other landowners, other users of NFS lands, and the public regarding the proposed pipeline and potential ways to mitigate those concerns.

Forest Service Manual 2700 — Special Uses Management
Chapter 20 — Special Uses Administration
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2726.33a — Exhibit 1

**Process for the Environmental and Historic Preservation Review of
Proposed Interstate Natural Gas Facilities
Federal Energy Regulatory Commission Office of Energy Projects
Division of Gas — Environment and Engineering**

In May 2002, the “Interagency Agreement (IA) on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission (FERC)” was signed by the FERC and other nine other Federal agencies (signatory agencies).

In order to facilitate the coordination between the FERC and the other agencies, the FERC staff developed this document to:

1. Inform Federal, State, and local agencies (participating agencies) about the basic procedures for the two processing options available to project proponents for the types of projects covered by the IA, with the FERC as the lead Federal agency;
2. Serve as a supplement to each signatory agency’s internal direction on implementing the IA;
3. Ensure that all participating agencies have a clear and common understanding of applicable FERC procedures, and the FERC’s expectations of project proponents and each participating agency; and
4. Describe how each of the participating agencies can become engaged in the environmental and historic preservation reviews of proposals and applications for interstate natural gas projects.

The FERC is responsible for authorizing the siting, construction, and operation of interstate natural gas pipelines, natural gas storage fields, and the liquefied natural gas (LNG) facilities pursuant to sections 3 and 7 of the Natural Gas Act of 1938 (NGA), as amended.

Virtually all applications to the FERC for interstate natural gas projects require some level of coordination with one or more Federal agencies to satisfy the FERC’s requirements for environmental review under the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, and the Magnuson-Stevens Act.

The May 2002 Interagency Agreement (IA) applies to those projects where the FERC would normally prepare an environmental assessment (EA) or an environmental impact statement (EIS) pursuant to its siting authority under the NGA. The IA provides a framework designed to expedite and streamline environmental and historic preservation reviews that must be conducted in conjunction with the processing of proposals and applications for these projects.

Smaller projects can be constructed under blanket-type or automatic authority, or may qualify as categorical exclusions which do not require the FERC to prepare an EA or an EIS.¹

PROPOSALS AND APPLICATIONS FOR NEW FACILITIES

Project proponents seeking authorizations from the FERC under sections 3 or 7 of the NGA have a choice, subject to the FERC's approval, of one of two procedures: (1) the "Traditional Filing Process," or (2) the recently adopted "NEPA Pre-Filing Process."

Both processes require the project proponent to begin working as soon as possible with the relevant participating agencies to enable them to identify resources and begin their analysis of the project, including identifying any cost recovery procedures.

1. The Traditional Filing Process

In the Traditional Filing Process, the project proponent, not the FERC, makes the first contacts with the participating agencies. The project proponent normally contacts the relevant agencies seeking information to determine the feasibility of building and operating the proposed facilities within an identified project area. The project proponent may contact agency staff informally by phone, or make contact in a written request for information. It is also common for the project proponent to file right-of-way applications with other participating agencies prior to filing an application with the FERC. Some participating agencies may spend considerable time providing data to the project proponent, reviewing possible corridors and alternatives, and working with the project proponent to select a route that avoids or minimizes known resource conflicts.

For most large projects, project proponents hold one or more pre-filing meetings with the FERC staff to obtain guidance regarding the required information to meet the FERC's filing requirements, as well as advice on what the project proponent can do to help ensure efficient processing of the application by the FERC. The project proponent may or may not have already contacted the appropriate participating agencies to discuss potential issues prior to a pre-filing meeting with the FERC.

Regardless of whether or not the project proponent contacts the FERC prior to filing its application, under the Traditional Filing Process, the FERC establishes contact with other participating agencies after the application is filed. This first contact generally occurs in conjunction with the FERC's issuance of a Notice of Intent (NOI) to prepare an EA or EIS, and may be oral or written. The NOI constitutes the beginning of the environmental review process;

¹ Most existing interstate natural gas companies hold Blanket Certificates from the FERC that allow them to construct facilities if they meet certain environmental standards and project cost limitations (see CFR 18, sections 157.203 and 157.205) without further Commission review or approval. Consultation with agencies is still required for land use authorizations and environmental consultations because other agencies may have their own permit requirements and may require separate NEPA analysis. Although these types of projects are not covered by the IA, the companies may approach signatory agencies seeking input for environmental review and approval.

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it contains a brief description of the proposal; a request for participating agencies to identify (“scope”) issues and comment on the proposal; a request for cooperating agencies; and contact information with details regarding phone numbers, mail and website addresses. The scoping process is conducted to identify issues, and to identify means of resolving conflicts, and avoiding or mitigating adverse effects. As discussed in the IA, this early point in the process is where the signatory agencies begin to work collaboratively to complete the required review process as expeditiously as feasible.

The key difference between the Traditional Filing Process and the NEPA Pre- Filing Process (described below) is that in the Traditional process the environmental analysis, including scoping, does not begin until after the project proponent files its application with the FERC. Thus, there is often little interaction between the FERC, the project proponent, and other relevant agencies. The result of this is that interagency coordination is deferred until later in the process.

2. The NEPA Pre-Filing Process

The FERC developed the NEPA Pre-Filing Process as a mechanism to identify and resolve issues at the earliest stages of project development by involving the participating agencies and the public earlier in the process. While the NEPA Pre-Filing Process is a voluntary process, available at the request of the project proponent, it is subject to the FERC’s approval. The FERC strongly encourages project proponents to avail themselves of the benefits and efficiencies to be gained from increased public involvement and early issue resolution.

Not unlike the Traditional Filing Process, in the NEPA Pre-Filing Process, a participating agency may first become aware of a project through a contact by the project proponent. The project proponent is responsible for asking agencies, other than the FERC, to participate in the NEPA Pre-filing Process. When asked to participate, each participating agency reviews of the project, examines its resources and program goals, and then determines whether it is willing and available to participate in the NEPA Pre-Filing Process. A key consideration for some Federal land management agencies’ participation in the NEPA Pre-Filing Process is the project proponent’s willingness to file a preliminary right-of-way application and establish a cost recovery account to fund agency participation (for example, the Bureau of Land Management and the Forest Service).

After the project proponent ascertains the willingness of the other agencies to participate in the NEPA Pre-filing Process, it must send a request to the FERC describing why the project proponent wants to use the process, any work done to date, and plans for public involvement. Based on this information, the FERC must then determine whether pre-filing coordination is likely to be successful.

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If the FERC approves a project proponent's request to use the NEPA Pre-Filing Process, the project is assigned a Docket Number with a "PF" prefix (for example, PF01-01) which serves as the identifier for placing all relevant correspondence in the FERC's public record for that project.

The FERC then notifies the participating agencies by telephone or in writing that the project proponent's NEPA Pre-Filing request has been approved. The FERC will also discuss the agencies' participation in a planning or informational meeting with the project proponent to discuss land and resource issues and concerns. The FERC and the participating agencies may consult regarding the agencies' ability to commit to a pre-filing time frame and a schedule established by the FERC. Most of the activities described in the IA regarding the NEPA Pre-Filing Process take place much sooner than they would otherwise be conducted in the Traditional Filing Process.

The FERC asks each participating agency to designate a primary contact for the project, and to devote the resources needed to commit to the schedule for processing the proposal. Similarly, the FERC identifies a project manager for each case. The reviews and schedules of all the agencies participating in the NEPA Pre-Filing Process will run concurrently, rather than sequentially, as is often the case in the Traditional Filing Process.

The signatory agencies have agreed in the IA to work with each other, and with other entities as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. The signatory agencies are also expected to provide the information and expertise to conduct the reviews in a timely manner, consistent with the established schedule. Other responsibilities of the signatory agencies in the IA include:
Identifying each agency's role and responsibilities;

Identifying significant issues or other administrative or land use/land designation barriers;
Providing available data and recommendations; and

Assisting in the drafting of NEPA documents, and related activities.

Timeline Comparison ISON

The following discusses the typical timeline for a proposed project, highlighting some of the differences in activity and timing that might occur during the Traditional Filing Process, in comparison to what might occur during those same blocks of time during the NEPA Pre-Filing Process.

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Months 0 — 5:

During this initial stage of any project, the project proponent is actively developing and marketing its proposal. Exploratory requests and planning activities are initiated solely by the project proponent. There is little difference between the Traditional and the NEPA Pre-Filing Processes during this time period.

The FERC staff has only very limited knowledge of the project at this stage, based on articles in the trade press, or through informal meetings with the project proponent. At this point, the FERC would not assign any resources to review or evaluate the project proponent's proposal. As the project proponent develops a study of potential rights-of-way, the participating agencies, landowners, and the general public may be contacted by the project proponent to inform all interested parties of its plans. A project proponent may contact a participating agency with requests for information, such as land ownership patterns, land status, and other available resource data or studies, including requests for copies of documents such as land management plans, existing studies, corridor designations, and so forth.

It is near the end of this phase that the project proponent may contact Federal land management agencies about filing right-of-way applications with and establish cost recovery accounts.

Months 5 — 12:

During this stage, in the Traditional Filing Process, a project proponent is continuing to develop its project plans and is beginning to identify a preferred route (and alternatives). As required surveys are started, Federal, State and local land management agencies, and landowners are contacted. The FERC staff becomes much more aware of the project at this point, but there is no requirement that the project proponent notify the FERC prior to filing an application. The FERC typically does not devote significant resources to the project during this time. Likewise, other participating agencies with permitting authority would not be expected to devote significant time or resources toward evaluating or addressing a proposal during this phase. With the NEPA Pre-Filing Process, the FERC staff would begin to devote significant resources to addressing the proposal and working with the project proponent as much as 8 months prior to the filing of an application at the FERC. The FERC staff will make contact with the project proponent and the participating agencies at the earliest possible point to initiate scoping activities and begin the environmental analysis.

It is during this early period of early notification and contact with the interested parties, the development of shortened timelines and schedules, that the benefits of the NEPA Pre-Filing Process are most evident. However, participating agencies should be aware that at this point the project proponent may not have as much specific information about its proposal as it would have under the Traditional Filing Process, after an application has already been submitted to the FERC.

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Months 12 — 20:

Using the Traditional Filing Process, the project proponent prepares its environmental reports and assembles its application for filing with the FERC during this period. After the filing of the application, the FERC notifies the public of the receipt of the application, conducts the necessary scoping, identifies and resolves issues, prepares and issues the NEPA document, then issues an Order (equivalent to a Record of Decision) approving the project. For a project requiring an EIS, this process can take 14 to 16 months.

With the NEPA Pre-Filing Process, the frontloading of the scoping, environmental analysis, and initial documentation of that analysis, makes it possible for the FERC staff, in cooperation with the participating agencies, to finalize and issue a Draft EIS shortly after an application is filed (approximately 2 to 3 months after filing of the application). As a result, a final environmental document and Order can be issued by the FERC in 5 to 7 months.

2726.4 — Electric Transmission and Distribution

2726.41 — Powerline Facility Eligible for Financing Under the Rural Electrification Act (REA) [Reserved]

2727 — Transportation

See FSH 2709.11, chapter 30, for direction on land use fee administration. See FSH 2709.11, chapter 40, for direction on special use authorization administration.

2726.42 — Other Utility Improvement Eligible for Financing Under the REA

See FSH 2709.11, chapter 30, for direction on land use fee administration. See FSH 2709.11, chapter 40, for direction on special use authorization administration.

2726.43 — Powerline Facility [Reserved]

See FSH 2709.11, chapter 80, for direction on operating plans and operating agreements for powerline facilities.

2726.44 — Other Utility Improvement [Reserved]

2727 — Transportation

2727.1 — Aircraft Facility

This designation includes sites that involve some form of aviation-related activity. This designation does not include certain aviation support functions, such as electronic air navigation aids. Determine the appropriate designation when issuing authorizations for related uses.

2727.11 — Airport or Heliport

This designation includes sites used for the takeoff and landing of aircraft. It may include all related facilities ranging from service buildings to approach lighting systems. In addition, an authorization may include a reasonable amount of NFS lands for needed clearance along approach and departure paths.

This type of use generally excludes other uses of NFS lands. Do not issue an authorization for an airport or heliport if non-Federal land is available that use.

2727.12 — Hangar and Service Facility

This designation includes structures related to aircraft use where the airport itself is not located on NFS lands.

2727.13 — Airport Concession

Issue an authorization under this designation only if the concession relates directly to aircraft use, such as pilot training facilities or aircraft rental offices. For other types of concession uses, the community use categories in FSM 2723.6 are appropriate. Consider authorizing these uses under an airport authorization (FSM 2727.11) if the airport facility is located on NFS lands.

2727.14 — Airport or Airway Beacon

This designation includes airport approach lighting systems or rotating beacons when an airport is not located on NFS lands. This designation also includes the few instances where a navigation route marker consists of a visual, nonelectronic device.

2727.15 — Helicopter Landing Site

This designation includes only temporary facilities used for helicopter operations that are not associated with other uses.

2727.2 — Marine

This designation includes uses associated exclusively with nonrecreational water travel. See FSM 2721 for direction recreational water uses.

2727.21 — Mooring Point

This designation includes minor uses along waterways for securing boats or other watercraft to land. Generally, there are no improvements at these sites.

2727.22 — Boat Dock, Wharf, or Pier

This designation includes improvements along rivers or shores used for securing watercraft. These improvements may range from minor pilings for log raft operations to larger pier facilities for servicing and storing boats or ships. Verify the ownership of the water area. Generally, require an authorization only for boat docks, wharfs, and piers located on NFS lands or waters, unless issuing an authorization for these facilities off NFS lands is necessary to protect adjacent NFS lands.

2727.23 — Canal

This designation includes only artificially constructed waterways used for transportation. Other water uses are addressed in FSM 2729.

2727.24 — Lighthouse

This designation includes lighthouse buildings and improvements that are directly related to lighthouse buildings and are necessary for their operation.

2727.25 — Beacon, Buoy Marker, or Similar Type of Navigational Aid

This designation includes sites where there are nonelectronic signaling or locating devices assisting operators of watercraft to determine their position.

2727.3 — Railroad

This designation includes rights-of-way for railroad tracks and related facilities for operation of a railway system. Many railroad companies own the land or have a right-of-way authorization for NFS lands underlying their main railway line and major railway spurs. However, additions to the railway system (such as for additional tracks or new signal devices) on NFS lands that are not covered by an authorization require amendment of an existing authorization or issuance of a new authorization. Consider issuing a long-term authorization for these uses.

2727.31 — Railroad Right-of-Way

This designation includes the track and all facilities relating to the operation of a railway.

2727.32 — Railroad Signal Device

This designation may include lighted railroad crossing gates or approach signs.

2727.4 — Federal Aid Highway Right-of-Way

See FSM 2730 for authorities and direction for authorizing rights-of-way for roads and trails across NFS lands or Federal interests in land. These rights-of-way are listed below.

2727.41 — United States Department of Transportation Easement

See FSM 2730.

2727.5 — Road or Trail Authorization

See FSM 2730.

2727.51 — National Forest Road and Trail Act Easement

See FSM 2730.

2727.51a — Cost Share Easement

See FSM 2730.

2727.51b — Non-Cost Share Easement

See FSM 2730.

2727.51c — Forest Road

See FSM 2730.

2727.51d — Private Road

See FSM 2730.

2727.51e — Public Road

See FSM 2730.

2727.52 — FLPMA Easement

See FSM 2730.

2727.52a — Forest Road

See FSM 2730.

2727.52b — Private Road

See FSM 2730.

2727.52c — Road Reservation

See FSM 2730.

2727.53 — FLPMA Permit

See FSM 2730.

2727.53a — Forest Road Permit

See FSM 2730.

2727.53b — Private Road Permit

See FSM 2730.

2727.53c — Temporary Permit for a Cooperator

See FSM 2730.

2727.53d — BLM License

See FSM 2730.

2727.53e — Trail

See FSM 2730.

2727.53f — Stock Driveway

See FSM 2730.

2727.54 — Wilderness Act Authorization for a Road or Trail

See FSM 2730.

2727.6 — Pipeline, Non-Energy-Related

This category includes only pipelines whose purpose is to transport substances other than water, oil, or gas. See FSM 2729 for a description of water pipelines.

See FSM 2726.3 for direction on oil and gas pipelines.

2727.61 — Slurry Pipeline

This designation includes pipelines that carry slurry, which consists of a finely crushed material combined with a liquid (usually water) as a transportation medium. Examples of material carried in slurry include coal and borax.

2727.7 — Cableway and Conveyor

2727.71 — Ropeway

Assign code 771 to uses that move personnel or material by means of cables or belts and that are not used for recreational purposes. This designation includes an aerial tramway, aerial or surface lift, tow, conveyor, or funicular operated for purposes other than recreation. They may reach several miles in length and support industrial activities such as mining.

See FSM 2721.39 for direction on ropeways for recreational purposes other than winter recreation. See FSM 2721.62 for direction on ropeways for winter recreation. See FSM 7320 for direction related to structural safety for the construction, operation, and maintenance of ropeways.

Include in a special use authorization for a ropeway the following mandatory supplemental clauses from FSH 2709.11, chapter 50, section 52.3: clause C-18, Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars, and clause C-19, Inspection of Ropeways.

2728 — Communications

This designation includes all the various uses of NFS lands that support communications. The

transmission or reception of voice, data, sound, signals, pictures, writings, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means are communications uses. Communications sites support wireless technologies and the use of airways. Linear rights-of-way are required for wired technologies (all forms of wire, cable, and fiber) that are ground-based and require a physical connection.

2728.1 — Communications Use, Non-Broadcast

This designation includes a variety of wireless communications uses. Typically, the uses are located at a communications site and include buildings, towers, and other supporting improvements. For further direction, see FSH 2709.11, chapter 90.

2728.11 — Wireless Internet Service Provider

A wireless internet service provider (ISP) utilizes wireless technology to connect subscription users to the internet. The ISP, as a facility owner or as an occupant, is considered an ISP for rent determination purposes. A subscriber of an ISP who has a communications facility on public lands to receive and transmit an ISP signal would be considered a PMRS use for rental determination purposes. ISP technology may be licensed or unlicensed, integrated with a cellular provider or independent. It provides mobile wireless access to the internet and data transmission directly to devices with integrated technology (for example, personal computer, laptop, tablet, PDAs, or other devices capable of streaming data) and/or devices with plug in technology (for example, a USB modem or Mobile Hotspot).

2728.12 — Cellular Telephone and Personal Communications Service

This designation includes a system of mobile or fixed communication devices that use a combination of radio and telephone switching technology and provide public switched network services to fixed or mobile users, or both within a defined geographic area. The system consists of one or more cellular sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, or microwave communications link equipment utilized as back haul for that site.

2728.13 — Passive Reflector

This designation includes various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A passive reflector commonly serves a microwave communications system. The reflector requires point-to-point line of sight with the connecting relay stations but does not require electrical power.

2728.14 — Private Mobile Radio Service

This designation includes holders of FCC-licensed private mobile radio systems primarily for a single entity for mobile internal communications. The communications service is not sold to

others and is limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities.

2728.15 — Commercial Mobile Radio Service

This designation includes FCC-licensed users providing commercial mobile radio services to individual customers. Services generally include community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment (monitoring devices), and other two-way voice and paging services.

2728.16 — Local Exchange Network

This designation includes radio services that provides basic telephone service, primarily to rural communities.

2728.17 — Microwave Industrial

This designation includes microwave communications uses that support the primary business of pipeline and power companies, railroads, and land resource management companies by providing the companies' internal communications system.

2728.18 — Facility Manager

A facility manager does not own or operate communications equipment or provide communications services. A facility manager owns a communications facility, such as a building or tower, on NFS lands and has a communications use lease that authorizes the lessee to rent space in or on the authorized communications facility.

2728.19 — Microwave Common Carrier

This designation includes holders of FCC-licensed facilities used for long-line intrastate and interstate public telephone (including relay of cellular traffic from other cellular sites), television, information, and data transmissions.

2728.2 — Telephone and Telegraph

This designation includes services provided over telephone lines that have a wire or wire-like physical connection carrying electricity or light between the subscriber and the rest of the communications network. Delivery of broadband and other data can occur via telephone. This designation also includes message delivery via telegraph.

2728.21 — Telephone and Telegraph Line Not Eligible for Financing Under the REA

This designation includes wired telephone and telegraph uses that are not eligible for financing under the REA.

2728.22 — Telephone Line Eligible for Financing Under the REA

This designation includes wired telephone uses that are eligible for financing under the REA and are exempt from land use fees under section 504(g) of FLPMA. See FSH 2709.11, chapter 30, for direction on land use fee administration. See FSH 2709.11, chapter 40, for direction on administration of special use authorizations.

2728.23 — Fiber Optic Cable

This designation includes fiber optic cable uses on NFS lands. Components of these uses include fiber optic cables, conduits, and individual fibers. See FSH 2709.11, chapter 40, section 48.23, for detailed direction on processing applications, issuing authorizations, and establishing land use fees for fiber optic cable uses on NFS lands.

2728.3 — Other Communications Uses

This designation includes miscellaneous communications uses not covered by the preceding communications use designations. These communications uses may be commercial or private and linear or non-linear (located at a communications site).

2728.31 — Other Communications Improvement

This designation includes other small, low power devices used to monitor or control remove activities.

2728.32 — Other Communications Improvement Eligible for Financing Under the REA

This designation includes any communications use eligible for financing under the REA.

2728.33 — Navigational Equipment

This designation includes navigational equipment for electronic signaling for aviation or marine navigation.

2728.34 — Amateur Radio

This designation includes private radio use licensed by the FCC as amateur radio.

2728.35 — Personal Private Receive Only

This designation includes receive-only antennas designed for the reception of electronic signals

to serve private homes.

2728.36 — Natural Resource and Environmental Monitoring

This designation includes monitoring equipment used by weather stations, seismic stations, and snow measurement courses.

2728.4 — Communication Site, Broadcast Use

2728.41 — AM and FM Radio Broadcast

This designation includes radio stations licensed by the FCC that broadcast AM and FM audio signals for public reception. Users include radio stations that generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants, and donations. Broadcast areas often overlap state boundaries. This designation relates only to primary transmitters and not to any rebroadcast systems such as translators, microwave relays serving broadcast translators, or uses licensed by the FCC as low power FM radio.

2728.42 — Broadcast Translator, Low Power Television, and Low Power FM Radio

This designation includes FCC-licensed television or radio broadcast translators and boosters or microwave relays serving broadcast translators, Low Power Television and Low Power FM. Broadcast translators receive a television or radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases, the translator relays the signal to another amplifier or translator. LPTV stations operate with less than 150 kW of power on Channels 14 through 69 or with 3 kW of power on Channels 2 through 13. A LPTV station may broadcast independently from any television station. A LPFM station is limited to non-commercial educational or government entities by the FCC. This category of use includes translators associated with public telecommunication services.

2728.43 — Cable Television

This designation includes a communications use that transmits video programming to multiple subscribers in a community over a wired or wireless network. These systems normally operate as a commercial entity within an authorized franchise area. This category does not include rebroadcast devices, personal or internal antenna systems, such as private systems serving hotels or residences. Microwave facilities that are solely used in conjunction with cable television systems are included in this category.

2728.44 — Television Broadcast

This designation includes a communications use licensed by the FCC that broadcast ultra-high frequency and very high frequency (UHF and VHF) audio and video signals for public reception. This category of use includes commercial digital television stations (major and independent

networks) that generate income through commercial advertisement and educational digital television stations (public and university television stations whose operations are supported by subscriptions, grants, and donations). Broadcast areas may overlap State boundaries. This category does not include LPTV or rebroadcast devices such as broadcast translators or transmitting devices such as microwave relays serving broadcast translators.

2729 — Water (Non-Power Generating

Direction in this section applies to non-power-generating water uses.

2729.01 — Authority

Issue authorizations for impoundment, storage, transmission, or distribution of water under the appropriate provisions of FLPMA, the Act of October 27, 1986, or, if in wilderness, under the Wilderness Act of September 3, 1964.

2729.1 — Water Transmission [Reserved]

2729.11 — Irrigation Ditch [Reserved]

2729.12 — Irrigation Pipeline, 12 Inches in Diameter or More [Reserved]

2729.13 — Irrigation Pipeline, Less Than 12 Inches in Diameter [Reserved]

2729.14 — Water Pipeline, 12 Inches in Diameter or More [Reserved]

2729.15 — Water Pipeline, Less Than 12 Inches in Diameter [Reserved]

2729.16 — Water Conveyance System Easements Authorized by Section 501(c) of FLPMA

Section 501(c) of FLPMA (43 U.S.C. 1761(c)) authorizes the Forest Service to issue permanent easements for water conveyance systems used solely for agricultural irrigation or livestock watering, hereinafter “ditch bill easements,” subject to the conditions specified in section 501(c) of FLPMA, as detailed in this section. Ditch bill easements are exempt from land use and cost recovery fees. Applicants for a ditch bill easement must submit the information required in FSM 2729.16d to allow the authorized officer to determine eligibility for a ditch bill easement under section 501(c) of FLPMA. FSM 2729.16, exhibit 1, contains a flowchart for evaluating applications for ditch bill easements.

2729.16a — Criteria for Issuance of Ditch Bill Easements

Water conveyance system facilities on NFS lands that may qualify for a ditch bill easement include reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities for the impoundment, storage, transportation, or distribution of water, including roads and trails required for maintenance and operation of those facilities, that are used solely for

agricultural irrigation or livestock watering purposes and were constructed and in operation before October 21, 1976.

If all the criteria in this section are met, the authorized officer shall issue a ditch bill easement for a water conveyance system. The ditch bill easement is exempt from land use and cost recovery fees (43 U.S.C. 1761(c)(1)).

To be eligible for a ditch bill easement, a water conveyance system must meet all the following criteria (43 U.S.C. 1761(c)(1)(A)-(G)):

1. The applicant submits a written application on or before December 31, 1996.
2. The water conveyance system was constructed and placed into operation prior to October 21, 1976, either without authorization or under one of the following statutory authorities:
 - a. The Act of July 26, 1866 (43 U.S.C. 661).
 - b. The Act of March 3, 1891 (43 U.S.C. 946-949).
 - c. The Act of June 4, 1897 (16 U.S.C. 473-475, 477-482, 551).
 - d. The Act of February 15, 1901 (43 U.S.C. 959).
 - e. The Act of February 1, 1905 (16 U.S.C. 524).
3. The water conveyance system is in a prior appropriation doctrine state.
4. The applicant has a valid water right, established under applicable state law, for water to be conveyed by the water conveyance system.
5. At the time of submission of the application, the water conveyance system is used solely for agricultural irrigation or livestock watering purposes.
6. The originally constructed water conveyance system facilities have been in substantially continuous operation without abandonment. Non-use of water conveyance system facilities for any continuous five-year period constitutes a rebuttable presumption of abandonment of the facilities (43 U.S.C. 1761(c)(3)(A)).
7. The water conveyance system or portion of the water conveyance system covered by the application is not an enlargement or extension constructed after October 21, 1976. Enlargements or extensions of a water conveyance system after October 21, 1976, may not be authorized under a ditch bill easement (43 U.S.C. 1761(c)(2)(D); FSM 2729.16o).
8. The use served by the water conveyance system is not located solely on Federal lands.
9. The application contains a recordable survey and other information concerning the location and characteristics of the water conveyance system as deemed necessary by the authorized officer for proper management of NFS lands, including location of the water conveyance system on the ground and inclusion of the water conveyance system in the Forest Service's land status records

(FSM 2729.16b).

2729.16b — Determination of Whether an Applicant for a Ditch Bill Easement has a Valid Statutory Right-of-Way or Authorization

Existing water conveyance system facilities may have been authorized by a statutory right-of-way, a Forest Service special use authorization, or an authorization issued by another Federal agency, typically the BLM or another DOI agency. If an applicant for a ditch bill easement claims to have a valid statutory right-of-way or authorization for the applicant's water conveyance system, the application must include documentation supporting that claim (FSM 2729.16d).

1. Water conveyance system rights-of-way authorized by the Act of July 26, 1866 (43 U.S.C. 661), were not formally documented and may be shown by a water decree, deed, a ditch location statement, field survey notes filed with a BLM water rights application, court testimony, a court decree, a permit, water use records, water administrative records, irrigation records, ditch rider notes, or other historical data.
2. Most easements issued under the Act of March 3, 1891 (26 Stat. 1095), were issued by a DOI agency. A search by the applicant of BLM, other DOI agency, and Forest Service records may provide information that will aid in verification of these easements.

2729.16c — Documents That Meet Forest Service Survey Requirements

For purposes of the recordable survey requirement for a ditch bill easement application (43 U.S.C. 1761(c)(1)(F); FSM 2729.16a, para. 9), the following are examples of documents that meet Forest Service survey requirements if they are linked to an acceptable land survey monument and if they accurately depict the location of the water conveyance system: state ditch location statements; deeds; maps; public land surveys; centerline surveys; metes and bounds surveys; plats; orthophoto quads; topographic quads; or any combination of these documents. For reservoirs, the applicant must furnish copies of the high water line surveys filed with the State engineer, if available. No ditch bill easement may be issued until the recordable survey documentation submitted by the applicant is confirmed in the field by the authorized officer.

An acceptable land survey monument is any existing or original BLM or General Land Office corner; Homestead Entry Survey or Mineral Survey corner; or, if none of these corners exists within two miles of either the point of diversion or points of ingress or egress on NFS lands, a described and photograph-identifiable monument. A land survey monument may be a permanent physical feature used by surveyors as a matter of local practice.

2729.16d — Application Requirements for a Ditch Bill Easement

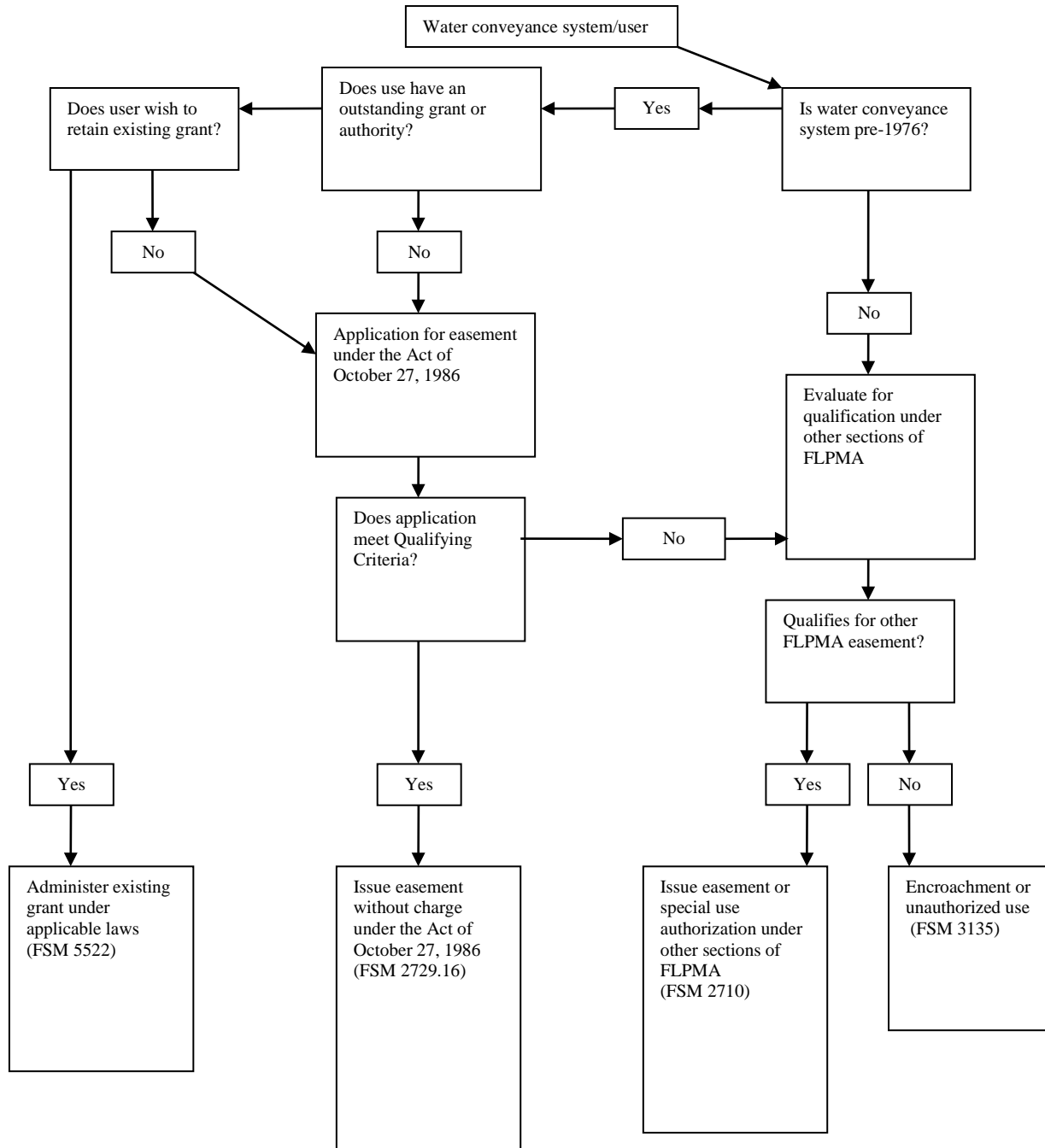
The authorized officer shall ensure that an application for a ditch bill easement meets all the eligibility criteria in FSM 2729.16a before issuing a ditch bill easement. Pre-application discussions should assist a potential applicant in determining whether it would make sense to submit a ditch bill easement application (FSM 2729.16, ex. 1). The authorized officer shall acknowledge by letter receipt of all applications for a ditch bill easement.

Ensure that an application for a ditch bill easement include:

1. A completed special use application form (form SF-299).
2. Documentation supporting any claim to a statutory right-of-way or authorization under a statute repealed by FLPMA (FSM 5520).
3. Documentation of a valid water right for water to be conveyed by the water conveyance system under a ditch bill easement and documentation of ownership of that water right.
4. Documentation showing that at the time the application is submitted, the water conveyance system to be covered by a ditch bill easement is used solely for agricultural irrigation or livestock watering purposes.
5. The water conveyance system facilities to be covered by a ditch bill easement have been in substantially continuous operation without abandonment.
6. The water conveyance system or portion of the water conveyance system to be covered by a ditch bill easement is not an enlargement or extension constructed after October 21, 1976.
7. A recordable survey consistent with FSM 2729.16c. The recordable survey must show that the water conveyance system is not entirely on Federal lands.
8. Any additional information concerning the location and characteristics of the water conveyance system deemed necessary by the authorized officer for identification of the water conveyance system and protection of NFS lands. Examples include points at which the water conveyance system enters and exits natural channels used to carry water, typical cross-sections, headgates, water diversion structures, roads, locks, gauges and other flow-measuring devices, road and other easement crossings, flumes, dam specifications, reservoirs, and pipelines.
9. Documentation of ownership of the water conveyance system to be covered by a ditch bill easement.

Forest Service Manual 2700 — Special Uses Management
Chapter 20 — Special Uses Administration
Amendment number: 2700-2023-1
Effective date: December 14, 2023
2729.16 — Exhibit 1

Evaluation of an Application for a Ditch Bill Easement



2729.16e — Option to Apply for a Ditch Bill Easement and Legal Effect of Obtaining or Not Obtaining a Ditch Bill Easement

1. The holder of a valid statutory right-of-way or authorization for a water conveyance system is not required to apply for a ditch bill easement and may continue to operate and maintain the water conveyance system under the statutory right-of-way or authorization (43 U.S.C. 1761(c)(2)(A)).
2. If the holder of a valid statutory right-of-way or authorization for a water conveyance system does not obtain a ditch bill easement, the authorized officer must administer the statutory right-of-way or authorization under the law under which the statutory right-of-way arose or the authorization was issued. See FSM 5522 for direction on administering valid existing statutory rights-of-way and authorizations. If the authorization was issued by the Forest Service, the Forest Service's regulations at 36 CFR Part 251, Subpart B, and directives at FSM 2710 and 2720 apply. If the authorization was issued by a DOI agency, that agency's regulations and policies apply (FSM 5522.12). The BLM's relevant regulations are found at 43 CFR Part 2800.
3. Issuance of a ditch bill easement to the grantee terminates the grantee's preexisting statutory right-of-way or authorization for the water conveyance system (43 U.S.C. 1761(c)(2)(A)).
4. If the owner of a water conveyance system constructed and in operation prior to October 21, 1976, has no valid statutory right-of-way or authorization and fails to obtain a ditch bill easement or other special use authorization under FLPMA, the authorized officer shall treat the water conveyance system as an encroachment and shall follow the direction in FSM 5335.

2729.16f — Billing of Land Use Fees When an Application for a Ditch Bill Easement is Submitted

There is no authority to forgive past due land use fees for existing special use authorizations for water conveyance system facilities built before October 21, 1976, or to discontinue current billing. When converting a special use authorization issued under another authority to a ditch bill easement, the authorized officer shall proceed as follows:

1. **Prior to Receipt of an Application for a Ditch Bill Easement.** The authorized officer shall continue to bill any annual land use fee for the water conveyance system until the holder submits a complete written application for a ditch bill easement (FSM 2729.16d).
2. **After Receipt of an Application for a Ditch Bill Easement.** The authorized officer shall defer any new billing of the annual land use fee for the water conveyance system until the application for a ditch bill easement is granted or denied.
3. **After a Ditch Bill Easement is Issued.** Discontinue billing any land use fees for the water conveyance system and refund any land use fees that were erroneously billed after the ditch bill easement was issued.

2729.16g — Review of Operation and Maintenance of a Water Conveyance System Prior to Issuance of a Ditch Bill Easement

When an application for a ditch bill easement is granted, the authorized officer shall require the applicant to review operation and maintenance of the applicant's water conveyance system with the authorized officer prior to issuance of a ditch bill easement. If the authorized officer will require an operating plan for the ditch bill easement, the authorized officer shall require the applicant to submit a proposed operating plan for review and approval by the authorized officer prior to issuance of the ditch bill easement. The operating plan must describe how the water conveyance facilities will be operated and maintained to prevent unacceptable damage to NFS lands and resources. The operating plan must be attached to the ditch bill easement and should be kept current by the grantee.

2729.16h — NEPA Compliance for a Ditch Bill Easement

Although issuance of a ditch bill easement is not discretionary when an application meets all the criteria in section 501(c)(1) of FLPMA and FSM 2729.16d, the terms of a ditch bill easement, including the operating plan, may require environmental analysis (FSM 1952.2).

2729.16i — Preparation and Issuance of a Ditch Bill Easement

1. Issue ditch bill easements using form FS-2700-9a, Easement for Agricultural Irrigation and Livestock Watering (FSH 2709.11, ch. 50, sec. 54.4).
2. Record additional information, as enumerated in FSM 2729.16d, paragraph 8, and attach it to the ditch bill easement.

2729.16j — Issuance of Separate Ditch Bill Easements to Multiple Owners of an Eligible Water Conveyance System

The authorized officer shall issue a separate ditch bill easement to each owner of a water conveyance system that is eligible for a ditch bill easement under section 501(c) of FLPMA and FSM 2729.16.

2729.16k — Enlargements or Extensions of a Water Conveyance System After October 21, 1976

Enlargements or extensions of a water conveyance system after October 21, 1976, may not be authorized under a ditch bill easement and must be authorized under an authorization other than a ditch bill easement. A separate authorization is not required for maintenance of or minor improvements to a water conveyance system.

2729.16l — Liability Under a Ditch Bill Easement

The grantee of a ditch bill easement is liable for injury, loss, or damage to NFS lands and

indemnification of the United States in accordance with the terms of the grantee's ditch bill easement.

If a water conveyance system deteriorates to the point of threatening persons or property and the grantee, after consultation with the authorized officer, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Forest Service has the right to undertake the necessary repair and maintenance and assess the grantee for the costs, regardless of whether the ditch bill easement requires the grantee to furnish a bond or other security (43 U.S.C. 1761(c)(3)(D)).

2729.16m — Termination of a Ditch Bill Easement

A ditch bill easement terminates if the water conveyance system facilities are used for any purpose other than agricultural irrigation or livestock watering. The owner of the water conveyance system must apply for and obtain another type of authorization under FLPMA (43 U.S.C. 1761(c)(3)(A)).

2729.16n — Revocation or Suspension of a Ditch Bill Easement

The authorized officer may revoke or suspend a ditch bill easement under the same grounds, including abandonment, as other special use authorizations issued under FLPMA. Non-use of a water conveyance system authorized by a ditch bill easement for any continuous five-year period constitutes a rebuttable presumption of abandonment of the facilities (43 U.S.C. 1761(c)(3)(A)). Before revoking a ditch bill easement for abandonment, the authorized officer must ask the grantee to relinquish the easement. Revocation or suspension of a ditch bill easement is subject to the adjudicatory administrative appeal process under 7 CFR Part 1, Subpart H.

2729.16o — Amendment of a Ditch Bill Easement

Amend a ditch bill easement to reflect any authorized modifications to the water conveyance system, other than minor improvements. Enlargements and extensions of a water conveyance system may not be authorized under a ditch bill easement and must be authorized under a separate authorization (FSM 2729.16k).

2729.16p — Transfer of a Ditch Bill Easement and the Associated Water Right

A ditch bill easement is fully assignable without imposition of land use fees or new terms. The assignee must notify the Forest Service of the assignment and the assignee's name and address within 60 days. A ditch bill easement terminates if the grantee transfers the easement to a person or entity that uses the water conveyance system for purposes other than agricultural irrigation or livestock watering. The transferee must apply for and obtain another type of authorization under FLPMA (FSM 2729.16m).

If the grantee transfers all the associated water right to a person or entity that uses the water

right for purposes other than agricultural irrigation or livestock watering, the transferee is ineligible for a ditch bill easement and must apply for and obtain another type of authorization under FLPMA (FSM 2729.16m).

1. **Complete Transfer of Associated Water Right to Multiple Parties.** If the grantee of a ditch bill easement transfers part of the associated water right to a person or entity that uses the water right for agricultural irrigation or livestock watering and transfers part of the associated water right to a person or entity that uses the water right for purposes other than agricultural irrigation or livestock watering, the grantee may assign the ditch bill easement to the transferee that uses the water right for agricultural irrigation or livestock watering. The transferee that uses the water right for purposes other than agricultural irrigation or livestock watering must apply for and obtain another type of authorization under FLPMA (FSM 2729.16m).
2. **Partial Transfer of Associated Water Right to Multiple Parties.** If the grantee of a ditch bill easement retains part of the associated water right, transfers part of the associated water right to a person or entity that uses the water right for agricultural irrigation or livestock watering, and transfers part of the associated water right to person or entity that uses the water right for purposes other than agricultural irrigation or livestock watering, the grantee retains the ditch bill easement, and the transferee that uses the water right for agricultural irrigation or livestock watering must apply for a ditch bill easement. The transferee that uses the water right for purposes other than agricultural irrigation or livestock watering must apply for and obtain another type of authorization under FLPMA (FSM 2729.16m).

2729.16q — Relinquishment of a Ditch Bill Easement

A grantee of a ditch bill easement may apply for and obtain another type of authorization under FLPMA. The ditch bill easement terminates upon issuance of the other type of authorization (see 43 U.S.C. 1761(c)(2)(A); FSM 2729.16e, para. 3).

2729.2 — Impoundment [Reserved]

2729.21 — Debris and Siltation Impoundment [Reserved]

2729.22 — Dam, Reservoir [Reserved]

2729.23 — Water Diversion, Weir [Reserved]

2729.24 — Reservoir [Reserved]

2729.25 — Dam, Reservoir, Pub. L. No. 99-545 [Reserved]

2729.26 — Reservoir, Pub. L. No. 99-545 [Reserved]

2729.3 — Development [Reserved]

2729.31 — Well, Spring, or Windmill [Reserved]

2729.32 — Stock Water [Reserved]

2729.33 — Wildlife Water Supply Reserved]

2729.34 — Fish Ladder [Reserved]

2729.35 — Water Storage Tank [Reserved]

2729.4 — Measurement [Reserved]

2729.41 — Stream Gauging Station [Reserved]

2729.42 — Water Quality Monitoring Station [Reserved]

2729.5 — Water Treatment [Reserved]

2729.51 — Water Treatment Plant [Reserved]