



**FOREST SERVICE HANDBOOK
PACIFIC SOUTHWEST REGION (R5)
VALLEJO, CALIFORNIA**

**FSH 2709.12 - ROAD RIGHTS-OF-WAY GRANT
HANDBOOK
CHAPTER 20 - DEPARTMENT OF TRANSPORTATION
EASEMENTS**

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Approved: Randy Moore, Regional Forester

Date Approved: 8/17/2016

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21.3 PROCEDURE FOR ISSUANCE

1. Following is a listing of the various portions of the current handbook or manual that appear to be modified in some way by the 1998 MOU. The handbook or manual guidance is referenced and then followed by related guidance from the 1998 MOU. The 1998 MOU guidance found in this supplement should not be considered comprehensive. Consult the Regional Office if you have questions. Forest personnel would benefit greatly by reading the 1998 MOU as opposed to assuming every aspect of its impact on the current handbook are taken into account below.

21.21 - FSH 2709.12 21.21 6. Condition 11 “When the State no longer needs the land, Section 317(c) of the act requires that it revert to the Secretary of the Department from which appropriated. It is not necessary to include this as a condition in the Regional Forester’s letter agreeing to the appropriation and transfer.”

2. The 1998 MOU appears to modify this condition under section III, item L “The Highway Agent will notify the FS when the need for the appropriation no longer exists. Upon notification the FS will either (1) accept the road as is, or (2) If a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that the Highway Agent must complete. Upon completion of the rehabilitation and acceptance of same by the FS, the Highway Agent will notify the FHWA, in writing, of the relinquishment. In either case, upon receipt of this notice of relinquishment by the FHWA, the lands appropriated will immediately revert to the FS and a formal relinquishing document will be prepared.” Inclusion this “new” clause in Region 5 letters of consent is recommended.

21.22 - FSH 2709.12 21.21 paragraph 1 “The stipulation is intended to cover general construction requirements, specific individual project needs, and such items as essential access points, and relocation of structures or other improvements affected by the proposed highway project. These points require prior agreement between the Regional Forester and the State, but their inclusion as conditions in the Highway Easement Deed would clutter the transfer document unnecessarily.”

3. While the current hand book suggest stipulations might clutter the transfer documents unnecessarily, page 2, paragraph 5 of the 1998 MOU instructions state “The Forest Service, issues a Letter of Consent to the appropriation and includes the stipulations in that consent letter.”

21.23 - FSH 2709.12 21.23, paragraph 1 makes reference to receiving the signed stipulation when it is required and inclusion of any signed stipulations with the easement deed and letter of consent.

4. Per 1998 MOU instructions, page 2, paragraph 2 “It is not necessary to have the State sign the stipulations. This action is an appropriation of land and interest in land for highway purposes by another Federal agency. The law provides that the Forest Service may condition its consent to that Federal agency with requirements deemed necessary for the protection and utilization of National Forest System lands. The FHWA requires the State to agree to the Forest Service stipulations prior to issuance of the easement.”
 - a. 2731.04c - FSM 2700, Chapter 2730, 2731.04c - Forest Supervisors states “10. Prepare a site-specific environmental assessment for the proposed location on National Forest System land.”

- b. Per 1998 MOU Section III, part C “In accordance with 23 CFR Part 771, 40 CFR 1501.6, and 1501.5(b), (c), and (e), it will be the responsibility of the FHWA to comply with the National Environmental Policy Act (NEPA) and other legal requirements in arriving at its determination that the lands are necessary for the project, and the FS will act as a cooperating agency or in limited situations as a joint lead agency in the development of any required NEPA document. The FHWA and the FS will coordinate on the determination of the appropriate environmental analysis.”
 - c. Also per 1998 MOU instructions, page 2, paragraph 1 “The Forest Service, as a cooperating agency, will assist the State in identifying impacts, mitigations, rehabilitation, etc., that need to be included in the environmental document. As a cooperating agency it is important to assure that all mitigations are included in the FHWA NEPA document. The Forest Service will in cooperation with the FHWA determine the level of environmental analysis needed. As the lead agency for NEPA compliance, the FHWA, in cooperation with the Forest Service completes the NEPA document. Upon completion of the environmental analysis, the FHWA signs the decision and requests the appropriation.”
 - d. Also per 1998 MOU instructions, page 2, paragraph 3 “A Forest Service NEPA decision document is not needed for the letter of consent. The Forest Service consenting or not consenting to the appropriation of National Forest System lands by another Federal agency does not require a NEPA decision. The FHWA is the lead agency for environmental compliance for the appropriation, highway construction, and the subsequent transfer to the State, and it makes the decision.”
5. 4(F) STATEMENT
- a. The Department of Transportation Act of 1966, Public Law 89-670, as amended by the Federal-Aid Highway Act of 1968, Public Law 90-495, Section 18, and contained in the 23 U.S.C. 138, hereinafter referred to as Section 4(f), requires a Federal, State, or local agency having jurisdiction over publicly-owned recreation areas or parklands to make a determination concerning the impact of a Federal-Aid highway project on these lands. Recreation areas are interpreted as including lands dedicated as Wilderness, National Recreation Areas, Wild and Scenic Rivers, highly developed irreplaceable recreation sites, areas being studied for addition to the National Wilderness Preservation System, rivers designated for potential addition to the wild and scenic rivers system or special interest areas established under 36 CFR 294.1(a). See FSM 2731.04c item 3.
 - b. The following procedure has been agreed upon between the Forest Service and Federal Highway Administration to document these determinations and report findings to the Federal Highway Administration.
 - c. As appropriate, Forests file one of the three below statements with the Regional Federal Highway Administrator for all Federal-Aid Highway projects to be constructed or reconstructed on National Forest System or other lands administered by the Forest Service. Prepare and file these statements during the corridor planning phase and prior to the required public corridor hearing of the appropriate highway agency. A 4(f) statement is not required if no construction or reconstruction will be occurring.

- d. For the letter of consent process, the Forest letter to the Regional Forester recommending issuance of a letter of consent should comment whether or not a 4(f) statement was needed.
 - e. If a 4(f) statement was transmitted to FHWA, the recommendation letter should communicate this fact as well as the result of any coordination with FHWA resulting.
 - f. If Forest needs any assistance regarding 4(f) statements or composition of a recommendation letter to the Regional Forester, please contact Regional Office lands.
- (1) Situation. None of the types of area specifically stated in the act are involved.
- (a) The proposed __ (Name) __ route __ (Location) __ (and the alternate route(s)) has been reviewed against the criteria of Section 4(f) of the Department of Transportation Act of 1966, Public Law 89-670, as amended by the Federal-Aid Highway Act of 1968, Public Law 90-495, Section 18, 23 U.S.C. 138 and 49 U.S.C. 303.
 - (b) Since this route crosses an area of public land under National Forest designation, as the agency having jurisdiction of these public lands, we have determined that the route does not encroach on and uses land from any of the types, of specially designated areas in the above public laws.
- (2) Situation. Once or more of the types of area specifically stated in the act are involved.
- (a) The proposed __ (Name) __ route __ (Location) __ (and the alternate route(s)) has been reviewed against the criteria of Section 4(f) of the Department of Transportation Act of 1966, Public Law 89-670, as amended by the Federal-Aid Highway Act of 1968, Public Law 90-495, Section 18, 23 U.S.C. 138 and 49 U.S.C. 303.
 - (b) Since this route crosses an area of public land under National Forest designation, as the agency having jurisdiction of these public lands, we have determined that the route does, in fact, encroach on and uses land from a __ (type of area(s)) __ as specified in the above public laws and we recommend a Section 4(f) determination procedure be initiated.
- (3) Situation. The Forest Service analysis of the route and its effect on management of the National Forest clearly identifies, for the first time, a current or proposed use of land which should be incorporated into one of the specifically stated types of areas and we will implement an action plan for such designation as a result of the analysis.
- The proposed __ (Name) __ route __ (Location) __ (and the alternate route(s)) has been reviewed against the criteria of Section 4(f) of the Department of Transportation Act of 1966, Public Law 89-670, as amended by the Federal-Aid Highway Act of 1968, Public Law 90-495, Section 18, 23 U.S.C. 138 and 49 U.S.C. 303.
6. Since this route crosses an area of public land under National Forest designation, as the agency having jurisdiction of these public lands, we have determined through detailed analysis that conditions of use exist of a nature which requires a

designation of the type stated in the above act. It is our intent to now proceed with such a designation. Since the project will use land from the area proposed for designation we recommend that a Section 4(f) determination procedure be followed.

7. The submittal of anyone of these statements does not negate the need to comply with the procedures and requirements of the National Environmental Policy Act of 1969.
8. FHWA is responsible for 4(f) analysis and is responsible for NEPA analysis also unless delegated otherwise.
9. If a 4(f) condition exists with a proposed highway project, this will typically be communicated to FHWA well ahead of when FHWA would request consent for appropriation of land or interest in land for an easement. The presence of 4(f) conditions needs to be accommodated in project designs. However, the letter from the Forest to Regional Forester recommending that a letter of consent be issued, should make reference to the presence any 4(f) conditions to inform the Regional Office that 4(f) conditions were present, particularly if there are any special conditions or stipulations related to a 4(f) condition.
10. The letter from the Forest recommending the Regional Forester issue a letter of consent is to inform the Regional Office a Forest is satisfied with a proposed project, not to communicate problems with a project for the first time.
11. An example letter to the Regional Forester recommending issuance of a letter of consent is immediately below for reference.

21.3 EXHIBIT 01 - Example Letter of Consent

File Code: 2730

Date:

Route To:

Subject: Recommendation to Issue Letter of Consent

To: Regional Forester

On June 1, 2010, you received a request from FHWA for a Letter of Consent (LOC) for a USDOT easement on Deer Road PFR 101 across the XXXXX National Forest. I support the issuance of a LOC to FHWA as requested. The LOC should be for the operation and maintenance of Deer Road PFR 101 across public land in XXXXX County between State Route 30 and the town of Smithville. I have attached a copy of the conditions and stipulations which I believe are necessary for the protection and utilization of National Forest System Lands. Please see exhibit A.

On June 15, 2010 our forest engineer met with Ms. Smith, of FHWA, and Mr. Jones, of Caltrans, to discuss easement widths along PFR 101. They drove the route to verify and agree on appropriate easement widths. I concur with the easement widths agreed to in the field and included in the draft highway easement deed. This project is in conformance with the XXXXX National Forest Land Management Plan.

The project is in the public interest. The request is for an existing highway operated by Caltrans. Continued maintenance of the road is beneficial to the public. A section 4(f) statement, under the provisions of Department of Transportation Act of 1966, Public Law 89-670, as amended by the Federal-Aid Highway Act of 1968, Public Law 90-495 , is not required since no construction or reconstruction is occurring.

If you have any questions, please contact Jane Gray of our lands staff at XXX-XXX-XXXX.

XXXXX X. XXXXXX

Forest Supervisor

Enclosure: See Exhibit A Attached

Exhibit A

Subject, however, to the following terms, conditions, and covenants, per FSH 2709.12 21.21 exhibit 01.

1. Outstanding valid claims, if any, existing on the date of this grant, and the Grantee shall obtain such permission as may be necessary on account of any such claims.
2. The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of operation and maintenance of a highway and does not include the grant of any rights for nonhighway purposes or facilities:
 - a. Provided, That the right of the Forest Service to use or authorize the use of any portion of the right-of-way for nonhighway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the

United States Code and of the Federal Highway Administration regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and, in any case, the Grantee and the Federal Highway Administration shall be consulted prior to the exercise of such rights; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of construction clearing limits, (except that such signs shall not be located on the right-of-way of an Interstate System).

3. Consistent with highway safety standards, the Grantee shall:
 - a. Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - b. Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Regional Forester and the Grantee prior to completion of the highway and the Grantee shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
4. The Grantee shall establish no borrow, sand, or gravel pits; stone quarries, permanent storage areas; sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way; unless shown on approved construction plans, without first obtaining approval of the Regional Forester.
5. The Grantee shall maintain the right-of-way clearing by means of chemicals only after consultation with the Regional Forester. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.
6. The Grantee will notify the FS when the need for the appropriation no longer exists. Upon notification the FS will either (1) accept the road as is, or (2) If a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that the Grantee must complete. Upon completion of the rehabilitation and acceptance of same by the FS, the Grantee will notify the FHWA, in writing, of the relinquishment. In either case, upon receipt of this notice of relinquishment by the FHWA, the lands appropriated will immediately revert to the FS and a formal relinquishing document will be prepared.
7. The Grantee shall maintain the right-of-way and highway facilities to acceptable standards of repair, orderliness, sanitation, and safety. Subject to the following stipulations, per FSH 2709.12 21.22 exhibit 01.

Before any clearing of the right-of-way or construction of the highway commences:

- a. Prepare, in cooperation with the Regional Forester, a clearing plan that sets forth in detail the procedures and standards that will apply to (1) all clearing and disposal of merchantable timber and young growth in the right-of-way and

(2) debris disposals, including debris removal from all streams. Such plan shall include provision for payment by the Grantee or its contractors for the merchantable timber on lands of the United States to be cut, used, or destroyed in the construction of the highway or in clearing of said right-of-way. Payment for merchantable timber shall be at appraised value as determined by the Regional Forester: Provided, That the Regional Forester may dispose of the merchantable timber to other than the Grantee or its contractors at no stumpage cost to the Grantee or its contractors.

- b. Prepare, in cooperation with the Regional Forester, a landscape and erosion control plan with the objective of protecting, restoring, or enhancing the roadside landscape, protecting soil, and protecting or reestablishing vegetative cover. Such plan shall, when appropriate, provide for vegetating cuts, fills, and other areas damaged as a result of highway construction; maintenance or operation; and for terraces, drainage, waste disposal areas, soil replacement, and other related requirements necessary to achieve the objective.
- c. Dispose of waste material resulting from slides during and after construction and surplus material at locations approved by the Forest Supervisor. A plan showing the proposed method of disposal shall be submitted by the Grantee at the time approval is requested.
- d. Re-establish or restore public land monuments disturbed or destroyed by construction, reconstruction, or maintenance according to instructions of the Bureau of Land Management, Department of the Interior. Other land monuments and property corners or witness markers shall not be damaged, destroyed, or obliterated without the prior permission of the Regional Forester and shall be relocated or reestablished in accordance with standards satisfactory to the Regional Forester.

21.3 EXHIBIT 02 - Example MOU Between Federal Highway Administration and the Forest Service

File Code: 1500/2730/7740

Date: November 23, 1999

Route To:

Subject: Memorandum of Understanding between the Federal Highway Administration and the Forest Service

To: Regional Foresters

Enclosed is a copy of a recently executed Memorandum of Understanding (MOU) between the United States Department of Transportation (DOT), Federal Highway Administration (FHWA), and the United States Department of Agriculture, Forest Service (FS). This MOU provides new procedures for Federal-aid highways authorized by a DOT easement and amends processing procedures of the May 11, 1981, MOU (FSM 1535.13 - No. 81-SIE-007) for Forest highways. This MOU also amends and supersedes existing MOU's related to Federal-aid and Forest highways at the Regional and Forest levels.

This MOU establishes new, streamlined procedures for processing these requests by eliminating those Forest Service requirements, contained in Forest Service Manual (FSM) 2731 and Forest Service Handbook (FSH) 2709.12, Chapter 20, that duplicate FHWA requirements. Appropriate amendments have been made to the relevant FSM and FSH material and will be published shortly. However, the MOU is effective and can be implemented immediately.

A summary of the MOU contents and interim instructions for implementing its provisions, pending publication of the Directives is enclosed.

If you have questions you may contact Randy Karstaedt (RKarstae/wo) at (202) 205-1256. If there are questions regarding NEPA, please contact Mary Reddan (Mary Reddan/wo) of the NEPA Coordination Staff at (202) 205-1318.

/s/ for Brent Handley

JACK L. CRAVEN

Director of Lands

Enclosures

cc: John Bell

Mary Reddan

Janis Gramatins

IBM:LANDS:RICHARD:11/23/99:LANDS/5460_RIGHTS_OF_WAY/INSTRUCTIONS_FOR_DOT_MOU_IMPLEMENTATION2

21.3 Exhibit 03 - 1998 MOU

**MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AND
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
REGARDING THE APPROPRIATION AND TRANSFER OF
NATIONAL FOREST SYSTEM LANDS FOR HIGHWAY PURPOSES**

I. Purpose: The United States Department of Agriculture, Forest Service (hereinafter called the FS) and the United States Department of Transportation, Federal Highway Administration (hereinafter called the FHWA) recognize the need for streamlined, nationally consistent procedures by which the FHWA may appropriate National Forest System lands for the use of Interstate and certain highways under Chapters 1 and 2 of Title 23, United States Code (23 U.S.C.). Chapter 1 highways are owned, planned, developed, constructed, operated and maintained by State and local governments (hereinafter called State); the FHWA's responsibilities consist of transferring rights-of-way, providing funds for the construction of the facility, and ensuring compliance with

Federal requirements. Forest highways are generally constructed by the FHWA and then transferred to State ownership and control. Within this agreement, the term Highway Agent is used to identify the organization that undertakes the construction and/or maintenance of the highway facility, which organization is typically a State or local government, or the Federal Lands Highway Office of the FHWA.

As a result of our mutual desire to reduce the time and effort of processing Federal land transfers for public projects, this Memorandum of Understanding (MOU) provides procedures by which the Secretary of Transportation, acting through the FHWA may appropriate and transfer, to States, National Forest System lands for highway rights-of-way. The appropriation is subject to conditions the Secretary of Agriculture, acting through the FS authorized officer, may deem necessary for adequate protection and utilization of National Forest System lands and protection of the public interest.

FS requirements imposed by this MOU on States will be 1) negotiated by the FS with the State; and 2) implemented pursuant to contractual requirements and guidance between the FHWA and the States.

II. Authority: The Act of August 27, 1958, as amended,
23 U.S.C., Sections 107(d), 204(f) and 317.

III. Procedures: Existing procedures for the development of forest highways are contained in the "Memorandum of Understanding Related to Forest Highways Over National Forest Lands" dated May 11, 1981. This MOU amends and supplements the 1981 MOU, providing simplified

appropriation/transfer procedures for both forest highways and Chapter 1 highways. The FHWA and the FS agree to the following procedures:

A. The Highway Agent will notify the FS, as far in advance as possible, of any highway project being contemplated and arrange a meeting with the FS, the FHWA, and the participating Highway Agent to discuss the proposal and to determine if the appropriation of the lands or interest in lands for the highway is consistent with the appropriate National Forest Land and Resource Management Plan (Forest Plan) . If the proposal is consistent with the Forest Plan, a time schedule will be developed to assure that the requested appropriation will be processed within a reasonable time. The time schedule will identify any reports, public scoping requirements, or other information required from the FHWA, the FS, or the Highway Agent.

If the proposal is not consistent with the Forest Plan, the FS will determine whether the proposal justifies a plan amendment. If so, then a time schedule will be developed for the FS to complete the plan amendment prior to processing the requested appropriation.

B. The FHWA or the Highway Agent is responsible for final approval of road design for both Chapter 1 and Chapter 2 highways.

C. In accordance with 23 CFR Part 771, 40 CFR 1501.6, and 1501.5(b), (c), and (e), it will be the responsibility of the FHWA to comply with the National Environmental Policy Act (NEPA) and other legal requirements in arriving at its determination that the lands are necessary for the project, and the FS will act as a cooperating agency or in limited situations as a joint lead agency in the development of any required NEPA document. The FHWA and the FS will coordinate on the determination of the appropriate environmental analysis.

D. The FHWA will submit to the FS, a detailed and documented request for lands needed for the project including lands required for temporary construction activities. This will include a map, a copy of the environmental documentation, and other required reports.

E. Within a period of four months, the FS will review the material submitted by the FHWA and will notify the FHWA, in writing, (a) that the FS is in agreement with the appropriation subject to terms and conditions for construction, operation and maintenance of the highway that assures adequate protection and utilization of National Forest System lands, or (b) that the action is inconsistent with the purposes for which the lands are being managed. If the FS has not responded, in writing, within a period of four months to the request for appropriation, the requested right-of-way will be deemed appropriated by the FHWA, for transfer to the Highway Agent.

F. The FS agrees to participate in the project development process once the required information has been presented by the Highway Agent and/or the FHWA. Every effort will be made by all parties to resolve major differences identified through this cooperation in the project development process. If agreement cannot be reached, the details of the disagreement must be stated in the form of a letter from the FS to the FHWA, within four months of the FHWA request for the right-of-way. This letter must clearly state the reasons why an appropriation would be contrary to the public interest or would be inconsistent with the purpose for which the National Forest System lands are being managed.

G. Forest Service agreement to the appropriation will be in the form of a "Letter of Consent" which clearly states the conditions under which the agreement is given and will

be sent to both the FHWA and the State. These conditions involve the following considerations:

1. Any valid existing claims and/or use authorizations outstanding to third parties, not administratively waived by the FS, shall be eliminated.
2. The right-of-way should be nonexclusive with the FS retaining all rights to issue authorizations for uses not inconsistent or incompatible with highway use. The FS shall consult with the Highway Agent on appropriate stipulations to protect the roadway facility prior to the issuance of such authorization.
3. The FS will retain the right to any merchantable timber and all other resource materials not specifically appropriated, within the boundaries of the appropriation. The Highway Agent will notify the FS which timber or other resource materials within the appropriation are scheduled to be removed and the FS will determine whether a timber sale or other authorization for removal is appropriate.
4. All signing within the right-of-way will be installed and maintained by the Highway Agent. The Highway Agent will provide signs to mark National Forest boundaries (both for entering and leaving), intersecting Forest Service roads, directional signs to nearby National Forest information facilities which are staffed throughout the year, and signs to geographic or recreation areas. All signing will be in accordance with the Manual on Uniform Traffic Control Devices. Where feasible, the Highway Agent will install displays (panels or posters), furnished by the FS, at Interstate rest stops near National Forests.
5. The FS may provide conditions protecting the adjacent National Forest System lands from construction and maintenance activities which may cause off-right-of-way adverse effects, such as wildfire, chemical control of vegetation and animals, runoff drainage, and re-vegetation with nonnative species.

H. The FHWA shall provide in the contractual guidance between the FHWA and the State that the State is responsible for the removal and cleanup of all releases or threatened releases of hazardous substances originating on the highway right-of-way, including those that extend beyond the boundaries of the appropriated right-of-way to adjacent National Forest System lands and resources. The FHWA will not assume or undertake the construction or maintenance of any highway described in Section I unless the State has agreed to be responsible for the removal and cleanup of all releases or threatened releases of hazardous substances described in the previous sentence. In the event of threat or damage to adjacent National Forest System lands, the FS will notify the Highway Agent of its concerns and, if necessary, request assistance from the FHWA as provided in Section 111(J) of this MOU. Nothing in this MOU or the contractual guidance between the FHWA and the State shall affect the authority of the FS pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, et. seq., or any other law.

I. The Highway Agent, when constructing the highway will comply with the conditions set forth in the Letter of Consent. The FS, acting as the Agent for the FHWA, will be responsible for the monitoring and enforcement of these conditions, including written notification, to the Highway Agent, of violations of these conditions and any subsequent action necessary to enforce compliance of the conditions. If necessary, the FS will request assistance from the FHWA as provided in Section 111(1) of this MOU.

J. The highway easement deed issued by the FHWA will incorporate and subject the conveyance to the conditions and terms provided by the FS. The FS, acting as the Agent

for the FHWA, will work directly with the Highway Agent in monitoring these conditions. If a Highway Agent is not complying with FS conditions, the FS will give notice of noncompliance. If the noncompliance is not corrected within 30 days, the FHWA upon notice from the FS will secure compliance informally or, if necessary, take action pursuant to 23 CFR 1.36.

K. An executed copy of the Highway Easement Deed issued by the FHWA to the Highway Agent will be furnished to the FS.

L. The Highway Agent will notify the FS when the need for the appropriation no longer exists. Upon notification the FS will either (1) accept the road as is, or (2) If a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that the Highway Agent must complete. Upon completion of the rehabilitation and acceptance of same by the FS, the Highway Agent will notify the FHWA, in writing, of the relinquishment. In either case, upon receipt of this notice of relinquishment by the FHWA, the lands appropriated will immediately revert to the FS and a formal relinquishing document will be prepared.

M. The appropriation will terminate if construction is not started within twenty (20) years, unless agreed otherwise.

IV. OTHER MOUS

To the extent that it is inconsistent, this MOU amends and supersedes existing MOUs for Federal-aid and Forest highways.

This MOU expressly amends and replaces the following provisions in the "Memorandum of Understanding Related to Forest Highways over National Forest System Lands" signed May 11, 1981:

1. Relating to consent and appropriation, Item 1 - Final Plan Approval, and Item 2 - Right-of-Way (a) (b) (c), and
2. On-the-ground approval of deviation of the highway location without a Letter of Consent, Item 3 - Construction (e).

V. Term

This MOU becomes effective upon signing by both agencies. Section III, items G (6) and K apply to existing and future appropriations. This MOU will remain in effect unless terminated by mutual agreement or by either agency giving the other agency thirty (30) days' prior written notice. Amendments to or modifications of this MOU may be initiated by either agency, but will not become effective or binding until agreed upon by both agencies.

Mike Dombeck //s//

Kenneth R. Wykle //s//

Chief, USDA, Forest Service

Administrator, USDOT, Federal Highway Administration

8-20-98

6-9-98

Date

Date

21.3 Exhibit 04 - 1998 Instructions

INSTRUCTIONS FOR IMPLEMENTING THE 1998 MEMORANDUM OF UNDERSTANDING WITH THE FEDERAL HIGHWAY ADMINISTRATION

Background: The Federal Highway Administration (FHWA) may appropriate and transfer land and interest in land within the National Forest System for Federal-aid system (including Interstate Highways) and Forest highways, subject to stipulations the Forest Service deems necessary under the authority of section 107 and 317 of the Act of August 27, 1958, as amended (72 Stat. 893, 916; 23 United States Code 317). The appropriation transfers the jurisdiction of the land needed for road purposes to the FHWA, who is acting on a request of the State highway/transportation department. In making the appropriation, the FHWA notifies the appropriate Forest Service office of the location of the right-of-way and of its intent to appropriate. The Forest Service has 4 months or 120 days from the date the request for appropriation is received to consent or not consent to the request for the appropriation.

If consent is given, the Forest Service may provide stipulations applicable to the appropriated right-of-way. The FHWA transfers the rights it has appropriated to the State highway transportation department, through a Department of Transportation (DOT) easement, which will include the Forest Service stipulations. If the 4 month period is exceeded, the land is appropriated by law, without Forest Service stipulations, and the FHWA transfers it to the State.

Processing: Much of the processing will be accomplished in the early phases of the project, and before the FHWA files its request for appropriations. Each proposal will be brought directly to the Forest Service by the State highway/transportation department to determine whether the proposal is consistent with the Forest Land Resource and Management Plan.

In accordance with the process outlined in the 1999 Environmental Streamlining National Memorandum of Understanding and the MOU (Memorandum of Understanding between USDA, FS and USDOT, FHWA regarding the Appropriation of Transfer of NFS land for Highway Purposes) dated August 20, 1998 and the MOU related to Forest Highways over National Forest Lands, dated May 11, 1981, where the highway project being contemplated is consistent with the appropriated Forest Plan, a time schedule will be developed to assure that the requested appropriation will be processed within 120 days from the date the request is received. The time schedule will identify any reports, public scoping requirements, or other information required from the FHWA, and the FS, or the Highway Agent. If the proposal is not consistent with the Forest Plan, the FS will determine whether the proposal justifies a plan amendment. The documentation will state that the proposed route has been reviewed against the criteria of Section 4(f) of the Department of Transportation Act of 1966, Public Law 89-670, as amended by the Federal-Aid Highway Act of 1968, Public law 9-495, Section 18.

When a consensus cannot be reached, the decision clearly lies with the Secretary of Transportation. Although the FS has 4(f) responsibilities, the DOT may move forward with projects after the 4(f) determinations have been made.

The Forest Service, as a cooperating agency, will assist the State in identifying impacts, mitigations, rehabilitation, etc., that need to be included in the environmental document. As a cooperating agency it is important to assure that all mitigations are included in the FHWA NEPA document. The Forest Service will, in cooperation with the FHWA determine the level of environmental analysis needed. As the lead agency for NEPA compliance, the FHWA, in cooperation with the Forest Service completes the NEPA document. Upon completion of the environmental analysis, the FHWA signs the decision and requests the appropriation.

The Forest Service develops needed stipulations based upon the environmental document prepared by the State, for the FHWA. It is not necessary to have the State sign the stipulations. This action is an appropriation of land and interest in land for highway purposes by another Federal agency. The law provides that the Forest Service may condition its consent to that Federal agency with requirements deemed necessary for the protection and utilization of National Forest System lands. The FHWA requires the State to agree to the Forest Service stipulations prior to issuance of the easement.

A Forest Service NEPA decision document is not needed for the letter of consent. The Forest Service consenting or not consenting to the appropriation of National Forest System lands by another Federal agency does not require a NEPA decision. The FHWA is the lead agency for environmental compliance for the appropriation, highway construction, and the subsequent transfer to the State, and it makes the decision.

If the project requires an amendment to the Forest Land and Resource Management Plan, a planning decision is required and is subject to appeal under the provisions of 36 CFR 217.

Only one NEPA document is needed (the FHWA document) with two decision documents. One Forest Service decision document for the Forest Service amendment, the other decision document for the FHWA NEPA document.

The Forest Service, issues a Letter of Consent to the appropriation and includes the stipulations in that consent letter. A sample Letter of Consent is enclosed for your use and will be included in the FSH amendment. Send the original Letter of Consent to the FHWA and a copy to the State highway transportation department constructing the highway.

The Letter of Consent, not the DOT easement, is the document that changes the status of National Forest System lands. The Letter of Consent agrees to the appropriation of National Forest System lands and, under the law, segregates the lands from location and entry under the public land laws, including the 1872 mining law. Document the appropriation, agreed to in the Letter of Consent, in the Forest Service land status record system and forward a copy of the Letter of Consent with a map to the Bureau of Land Management, requesting notation to its land record system.

If the Forest Service does not consent, due to lack of consistency with the Forest Plan, a written determination is made within the established time frames and sent to FHWA.

The FHWA prepares and issues the DOT easement and includes the Forest Service stipulations. Contrary to the existing FSH, there is no need for the Forest Service to prepare a highway easement deed. The FHWA is required to forward an executed (not recorded) copy of the DOT easement to the Forest Service. Whether or not the Forest Service receives a recorded copy of the easement is optional (per advice from the Office of General Counsel).

Monitoring and Compliance: The rights appropriated are subject to the stipulations included in the Letter of Consent, which the FHWA has included in its DOT easement. Under the MOU, the Forest Service, acting as the agent for the FHWA, is responsible for monitoring and enforcing all stipulations during construction, operation, and maintenance. The Forest Service works directly with the State, not the contractors, in assuring that all stipulations are met. However, the authorization for the highway is based upon an appropriation between two Federal agencies, and cannot be terminated for noncompliance. Send the FHWA a copy of a written notice of noncompliance and request it intervene to resolve the issue. The FHWA will provide additional enforcement in accordance with 23 CFR 1.36 to assure all conditions are met.

Retroactive Effects: Section III, items H and L of the MOU, provide for the removal and cleanup of hazardous material spills and the rehabilitation of roads that are relinquished. These two

items apply to all existing easements as well as new easements. These items are particularly important in reducing the liability of the Forest Service. In the case of hazardous material spills, many times the Forest Service is providing the funding for the initial cleanup of hazardous materials spills and assessing and collecting damages from the individuals who caused the spill. Under the MOU, the State will be responsible for cleanup and removal costs. In the case of rehabilitation, the Federal Highway Act does not provide for it. The act provides that the State notify the FHWA that the highway is no longer needed and the rights immediately revert to the agency from which the land was appropriated, in this case the Forest Service. Some State highway/transportation departments have been relinquishing public roads and facilities such as underground gas tanks because of the scarcity of maintenance funds and the Forest Service has borne the cost of removal of the highway and its facilities. This section of the MOU gives the Forest Service the capability to choose whether to accept the road as is or require rehabilitation prior to the State relinquishing it to the FHWA. This provision eliminates the Forest Service having to assume the liability of rehabilitation.

21.3 Exhibit 05 - 1998 MOU Letter of Consent

File Code:

Date:

LETTER OF CONSENT

(Name)

Division Federal Highway Administrator

(Address)

Dear (Name):

By letter, received (_____), the Federal Highway Administration requested the appropriation and transfer of National Forest System lands within the (_____ National Forest) 1/ (National Grassland) / for right-of-way for the construction/2, operation and maintenance of (Identification of highway) and appurtenant highway facilities across the following described lands, in the county of _____, State of _____, shown on the map entitled " _____ ", approved by (name and title), on (date)."[Forest Engineer]

A highway _____ miles long x _____ feet wide (or variable width):

Insert legal description here

Highway facilities:

Insert legal description here

The area aggregates _____ acres, more or less (optional)

The Forest Service consents to the appropriation and transfer of these lands under the provision of sections (107 (d)) and 317 of the Act of August 27, 1958, (72 Stat. [893] 3/ 916; 23 U.S.C. 317), subject to the construction3/, operation, and maintenance stipulations, contained herein as exhibit 01, which shall be included in the Department of Transportation easement issued by the Federal Highway Administration.

Sincerely,

(Regional Forester) or (Forest Supervisor) 4/ signature

1/ Delete the one that does not apply or insert appropriate reference if neither National Forest nor National Grassland.

2/ Delete for existing highway.

3/ Include when appropriation is for an interstate highway.

4/ Use title of person having delegated authority (FSM 2731)

21.3 Exhibit 06 - December 7, 2001 (Perfection of Title MOU)

**MEMORANDUM OF UNDERSTANDING
BETWEEN
FEDERAL HIGHWAY ADMINISTRATION-CALIFORNIA DIVISION
CALIFORNIA DEPARTMENT OF TRANSPORTATION
AND
USDA, FOREST SERVICE,
PACIFIC SOUTHWEST REGION AND
INTERMOUNTAIN REGION
TO PERFECT TITLE ALONG SEGMENTS OF EXISTING HIGHWAYS
ON FOREST SERVICE LANDS IN THE STATE OF CALIFORNIA**

This MEMORANDUM of UNDERSTANDING (MOU) is made and entered into by and between the Federal Highway Administration, California Division, hereinafter referred to as the FHWA, the State of California Department of Transportation, hereinafter referred to as the Department, and the USDA, Forest Service, Pacific Southwest and Intermountain Regions, hereinafter referred to as the Forest Service, and for purposes of this agreement, hereinafter referred to collectively as "The Parties".

1. HISTORY AND CONCEPT

Title 23 of the Code of Federal Regulations (CFR), Subpart F, Subsection 710.601, establishes provisions and procedures whereby federal lands, or interests in lands owned by the United States, may be transferred to a state highway department or its designee, based upon the documented need of those lands for a highway transportation project and the concurrence of the Federal land owner. This procedure is known as a Federal Land Transfer.

In 1998, the United States Department of Transportation, Federal Highway Administration and the USDA, Forest Service, signed a National MOU to establish a streamlined, consistent process for Federal Land Transfers, whereby the FHWA, on behalf of the United States of America may appropriate and transfer National Forest System Lands (NFSL) to the States for highway purposes. This transfer is subject to the conditions of the Authorized Officer of the Forest Service, acting on behalf of the Secretary of Agriculture. The conditions provide for the adequate protection and utilization of NFSL while protecting the interests of the traveling public.

Prior to implementation of the National MOU, the Department and the Forest Service entered into a Pilot Project on State Highway 4. This precedent-setting project allowed unrecorded sections of the State highway system to be incorporated with other previously recorded highway segments resulting in one continuous easement for the State of California along a sixty-five mile tract within the Stanislaus and Toiyabe National Forests. The project utilized a simplified survey and legal description process based on the premise that the existing highway is a physical monument that can be referenced in the legal description.

2. PURPOSE AND BENEFIT

The purpose of this MOU is to establish a process that will allow the parties to perfect title along previously unrecorded segments of highway existing on Forest Service lands in the State of California. The process calls for incorporating a narrative, streamlined format to describe the easement interest that will be transferred to the State of California, versus the typical metes and

bounds description. The legal description will be "sufficient to describe", the lands to be transferred and will fulfill recordation requirements. The benefits of this method are twofold: a savings in staff time and resources typically allocated to surveying and mapping efforts; and a more accurate inventory of the land interests of the United States in the State of California. The ultimate result will be more effective and efficient use of the public's tax dollars.

This MOU calls for a partnering effort by the FHWA, the Department, and the Forest Service to allow the highway easement across NFSL to be documented. It ensures the parties will continue to refine their communication efforts to continue this streamlined project delivery process for future efforts relating to both the interstate and state highway system. The parties recommend this process be used as a national model to augment federal land transfer procedures.

3. AUTHORITY

This MOU is established in accordance with the following laws and regulations:

Title 23 USC, Sections 317 and 107(d)
Transportation Equity Act for the 21st Century, 1998 (TEA 21), Sec 1309
National Environmental Policy Act (NEPA) of 1969, 42 USC 4321 et. seq.
40 CFR, Parts 1500 through 1508 - Council of Environmental Quality Regulations
23 CFR, Part 771 - Environmental Impact and Related Procedures
23 CFR, Part 710, Subpart, Subsection 710.601, Federal Land Transfer
36 CFR, Part 219 - National Forests Management Act Regulations

4. THE PROCESS AND HOW IT WILL BE IMPLEMENTED

Implementation of this MOU will be limited to those highways and/or segments of highways across NFSL existing on the date this MOU is signed by the parties. It is not applicable to new construction or proposed improvements outside such existing highways or segments of highways that would be subject to the appropriate authority of 23 USC Sections 317 and 107(d).

This streamlined process is based upon the following criteria for project implementation:

A. Parameters

1. The highway exists and is part of the Federal-aid system.
2. All parties agree the existing use of Forest Service land for the highway is appropriate and necessary to serve the traveling public.
3. The land owned by the United States is reasonably necessary for the highway right-of-way.
4. The highway or segments of highway selected for inclusion in this process have no evidence of appropriation to the State of California or its designee by a recorded highway easement deed. However, existing areas of highway previously appropriated may be incorporated with the unrecorded segments within NFSL in order to create a single controlling document for the entire corridor.
5. There will be no change in land use affected by the implementation of this process.

B. National Environmental Policy Act (NEPA)

1. In keeping with the terms and conditions of the 1998 National MOU, the FHWA is recognized as lead agency for those actions relating to the appropriation and

transfer of NFSL for highway purposes. The Forest Service will serve as a cooperating agency.

2. The action proposed is to perfect title for the operation and maintenance of existing highways in conformance with individual Forest Land Management Plans. Office of General Counsel, Department of Agriculture, and Federal Highway Administration legal counsel agree that property right appropriation will not precipitate provisions of the National Environmental Policy Act on the part of the Forest Service because transfer of title, in this case a property right, from one Federal agency to another does not constitute a significant Federal action on the part of the transferor.

3. The parties agree that the required NEPA action for this process to perfect title is a Categorical Exclusion (CE), in accordance with 23 CFR 771.117(e) and that a CE also satisfies the requirements of the California Environmental Quality Act (CEQA).

4. The Department is the initiating party and will work in partnership with the FHWA Division Administrator in the preparation of the joint CEQA/NEPA environmental documents.

5. The Forest Service is not taking an action subject to NEPA and is not required to sign the environmental documents.

C. Route/Corridor Selection

1. Proper timing and scheduling is crucial to the success of this program. The Department, as the initiating party, will prioritize existing highway routes upon which the State desires to perfect title by means of a highway easement deed.

2. Each of the Department's Regional/District, Deputy District Directors for Planning will provide a prioritized listing of routes to the designated Forest Service representative on each Forest no later than January 20th of each calendar year. A copy of the listing will also be provided to the FHWA.

3. The Forest Service will concur with those priorities based on its ability to support the selected routes and respond via a Letter of Support no later than 30 days subsequent to receiving the Department's nominated routes. A copy of each Forest's Letter of Support will be forwarded to their respective Forest Service Regional Office. When a route has been selected, the parties will meet to determine the following:

a. Responsibilities

(1) Agree on the action and responsibilities of each agency for the development of the easement deed

(2) Develop a timeline with names of persons responsible for completing specific items.

b. Right-of-Way (R/W) Width

(1) Establish the default r/w width using a standard distance from the centerline and existing highway post mile markers for location of features. Typically, this distance will be 100 feet from the centerline. Any necessary deviations shall be incorporated into the description.

The Forest Service and the Department will meet to discuss each proposed r/w width and select the appropriate method/means to describe the proposed easement area. If necessary, and upon concurrence of the parties, other methods may be developed to sufficiently describe the r/w width for incorporation into the highway easement deed.

(2) Identify special features, i.e., cultural resource sites, existing uses, planned uses, road intersections, utility easements, drainage facilities, etc. within the proposed r/w width that may cause an adjustment to the r/w width.

c. Field Verification

(1) Establish a team to verify, in the field, actual ground conditions that will require deviations from the standard easement width designated for the route/corridor that will be identified in the legal description of the highway easement deed. The following are recommended as team members:

Forest Service: Ranger District Representative
 Forest Cadastral Surveyor
 Engineering Representative

Caltrans: Local Maintenance Superintendent
 District R/W Engineering Representative

(2) The team will ground proof r/w widths and document them for incorporation into the highway easement deed.

5. LEGAL DESCRIPTION

The Department's District R/W Engineering Staff, in collaboration with Forest Service surveyors, will prepare the legal description for the highway easement deed. The description will reflect the fact that the highway exists in its present location. A copy of the description will be provided to the Forest Service for inclusion in its Letter of Consent. The parties will ensure that the legal descriptions in both documents are a complete match and error free. Subsequently discovered minor errors, e.g. typographical errors or a reversed bearing, will not be cause for nullification of the new highway easement.

The description will be in a format appropriate to the existing conditions as agreed upon by the Department's District R/W Engineering Staff and the Forest Service surveyors. It will be "sufficient to describe" the r/w area required for the corridor and will meet State of California requirements for recordation. Intersecting Forest Service roads, trails, structures, and facilities will be excluded. Waste and borrow sites permitted by Special Use Authorizations will also not be included in the legal description. The parties recognize that these legal descriptions may be incorporated into a National Integrated Land System, a joint project partnership between the Forest Service and the Bureau of Land Management allowing land parcel information to be placed in a Geographic Information System (GIS) environment. These legal descriptions may also be incorporated into the Department's Digital Highway Inventory Program. The parties agree to share land description technologies under this process.

6. DOCUMENT PREPARATIONS AND EXECUTION

The Department's District/Regional ROW Federal Land Transfer Coordinator (FLTC) will notify the FHWA Division Administrator of the State's need for r/w across NFSL and will prepare the

appropriate documentation referenced in Title 23, CFR, Part 710, Subpart F, Subsection 710.601. The FHWA Division Administrator will notify the R5 Regional Forester, Natural Resource Management Staff, of the State's request, within 30 days, and whether the FHWA finds the request reasonable and necessary for appropriation. For r/w across R4, the Humboldt-Toiyabe National Forest, the FHWA Division Administrator will notify the Forest Supervisor, Humboldt-Toiyabe NF directly.

A Letter of Consent, authorizing the appropriation of NFSL, will be prepared by the R5 Forest Service Regional Office, Natural Resources Management Staff. The document will be signed by the Regional Forester or his/her designated representative and sent to the FHWA Division Administrator. For R4, the Forest Supervisor, Humboldt-Toiyabe NF has been delegated authority by the Regional Forester, Intermountain Region to prepare and sign Letters of Consent authorizing the appropriation of lands within the Humboldt-Toiyabe NF. Under this expedited process, the Forest Service will provide the Letter of Consent to the FHWA within 30 days of the request date. FHWA will provide notice of the receipt of the Letter of Consent to the Department's District/Regional FLTC.

The Department will prepare the highway easement deed, utilizing the narrative legal description format, described in 5. Legal Description above, and forward it to FHWA for review. In accordance with 23 CFR, Part 701.601, the Department's attorney must review the deed and sign the statement certifying it meets State requirements for form and procedure. All Department actions will be completed within 30 days of receipt of the Letter of Consent from FHWA.

Following review by the FHWA R/W Staff, the FHWA Division Administrator will forward the deed to the FHWA Western Legal Services Office for review. Upon determination of legal sufficiency, the FHWA Division Administrator will execute the deed. All FHWA activities will be completed within 30 days of receipt of the highway easement deed.

The deed will then be forwarded to the District/Regional FLTC of the Department for recording in the appropriate county of record. Notice of recording will be provided to the FHWA California Division Office. A copy of the recorded highway easement deed will be provided to the Forest Service for its r/w records.

7. CONFLICT RESOLUTION

All parties agree to work cooperatively to avoid and resolve conflicts at the lowest possible level. If disagreements emerge which cannot be resolved, the following procedure will be followed:

- A. All parties involved must agree that an impasse exists.
- B. All parties involved must be able to respond in the affirmative to the following statements:
 1. The position taken is consistent with my agency's mission.
 2. The position taken is legal and ethical.
 3. The position taken is good for our customers and acceptable to all cooperators.
 4. The position taken makes efficient use of resources.
 5. Each party accepts full responsibility for the position he/she is taking.

C. If each party has honestly answered, "yes" to the above statements and an impasse still remains; the impasse shall be escalated as follows:

FOREST SERVICE	THE DEPARTMENT	FHWA
Transportation Engineer/ Assistant Forest Engineer	District/Regional FLTC	R/W Staff
Forest Engineer Engineering Staff	District Director	R/W Office
Regional Engineer	Deputy Director Project Delivery	FHWA Division Administrator

D. When the parties at the lowest level are unable to come to a solution, the problem must be escalated to the next working level. The parties from both levels will establish a meeting date within 5 working days of the documented date of disagreement and will continue to discuss items in an attempt to reach resolution. If an agreement still cannot be reached, the issue will then be escalated to the highest level. A meeting will be held within 5 working days of the documented date of disagreement to affect a resolution that is mutually agreeable among the parties. The resolution achieved will be binding among all parties.

8. OBLIGATION OF FUNDING

This MOU is neither a fiscal nor a funds obligation document and none of the parties are obligated to contribute or invest any money as a result of this MOU. Specific studies, activities and/or projects which involve the transfer of money, services, or property between the parties to this MOU will require execution of agreements or contracts wholly separate from this agreement.

9. PARTICIPATION IN SIMILAR ACTIVITIES

This MOU does not restrict any of the parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

10. OFFICIALS NOT TO BENEFIT

Pursuant to Section 22, Title 41, U.S.C., no member of, or delegate to Congress shall be admitted to any share or part of this agreement, or any benefits that may arise thereof as a result of this agreement.

11. DOCUMENT REVISION

This MOU may be revised as necessary by mutual consent of the parties, by the issuance of a written amendment signed and dated by the parties. The amendment shall become a part of this MOU as if originally written therein.

12. NOTICE OF TERMINATION

The parties may terminate this MOU by providing a sixty-day notice of termination. That notice, if given, shall be in writing and will be provided to the Regional Office of each of the parties at the following addresses listed below:

FSH 2709.12 - ROAD RIGHTS-OF-WAY GRANT HANDBOOK
CHAPTER 20 - DEPARTMENT OF TRANSPORTATION EASEMENTS
Supplement No.:R5 2709.12-2016-01 - Effective Date: 8/17/2016

USDA, Forest Service
R5 - Pacific Southwest Region
Attn: Regional Engineer
1323 Club Drive
Vallejo, CA 94592

FHWA - California Division
Attn: R/W Officer
980 9th Street, Suite 400
Sacramento, CA 95814-2724
USDA, Forest Service

State of California, Dept of Transportation
R/W Program
Attn: R/W Project Delivery
1120 N Street
Sacramento, CA 95814

R4 - Intermountain Region
Attn: Regional Engineer
324 25th Street
95814Ogden, UT 84401

Unless terminated by written notice, this MOU will remain in full force and effect for ten years from the last date of acceptance by all parties. The parties shall meet annually to review and assess the effectiveness of this agreement and, if necessary, make any needed revisions to the document as specified in Condition 11 of this agreement.

13. APPROVAL

In witness whereof, the parties hereto have executed this agreement as of the last date written below:

APPROVED BY____Signed_____10/30/01_____
Bradley E. Powell, Regional Forester Date
USDA FOREST SERVICE
PACIFIC SOUTHWEST REGION
01-MU-11052008-235

APPROVED BY____Signed_____10/23/01_____
Jack A. Blackwell, Regional Forester Date
USDA, FOREST SERVICE
INTERMOUNTAIN REGION
02-MU-11046000-007

APPROVED BY____Signed_____12/3/01_____
Brent Felker, Chief Engineer Date
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

APPROVED BY____Signed_____12/7/01_____
Michael G. Ritchie, Division Administrator Date
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION

21.3 Exhibit 07 - Reference Guide CALTRANS - Forest Service

File Code: 1560/2700

Date: February 1, 2011

Route To:

Subject: Reference Guide for Work with Caltrans

To: Forest Supervisors

Enclosed is a "Reference Guide" that will be used by both Caltrans and Forests when working cooperatively with Caltrans on highway projects on National Forest lands. This reference guide should help both agencies with issues that have come up over the last few years about consultation, coordination, environmental documentation and the other steps necessary for the forests to authorize these activities either through Special Use Permits or DOT Easement. Although we have current guidance in regulation and manual direction, and in a number of important MOUs with Caltrans and FHWA, there are new issues that continue to arise based on new circumstances. Because these areas not covered in past direction there have been misunderstandings that have gotten in the way of a productive partnership. This reference guide covers some of these areas and should help resolve issues. The MOUs are still the baseline agreement but the reference guide can be used for areas not covered and until we are able to update the MOU. The reference guide will be added to relevant sections of Region 5 policy FSH 2709.12. A copy of this guide with a letter of direction from Caltrans Headquarters has already been forwarded to your local Caltrans Districts and Offices.

Caltrans units are being asked to coordinate their activities with you much earlier than in the past so we can provide an early assessment of required steps and authorizations and the level of forest involvement that will be needed. It will give us the opportunity to be a full partner and cooperating agency in the NEPA work that Caltrans will lead. This will also give forests the ability to plan workloads and complete cooperative agreements or cost recovery agreements if needed. It is still expected that we will be responsive to unforeseen emergencies that are often the nature of highway work.

I will be sending this letter hardcopy and will include a helpful brochure produced by Caltrans, "How Caltrans Builds Projects". This outlines their planning process and will help you see the stages where we hope Caltrans and Forests will be working together.

If you have questions about this guide you can contact Christine Nota, Regional Forester's Representative in Sacramento at (916) 498-5901 or Nancy Fleenor, Lands Use Specialist at (707) 562-8971.

/s/ William C. Whitson (for)

RANDY MOORE
Regional Forester

Enclosure

cc: Nancy Fleenor
John Booth
Gregory Connick
Christine Nota
Michael J Miller
Paul T Anderson
Melissa Totheroh

21.3 Exhibit 08 - CALTRANS

REFERENCE GUIDE

CALTRANS

US FOREST SERVICE

FEDERAL HIGHWAY ADMINISTRATION

Coordination from Planning to Complete Project Design and Through the US DOT Easement and Perfection of Title Phases

The purpose of this guide is to provide a reference for the California Department of Transportation (Caltrans) and the U.S. Forest Service (USFS) when planning, preparing, and coordinating project plans for highway projects located on USFS lands. This reference guide identifies the process used to consult, coordinate and complete environmental documentation and other steps necessary for the USFS to authorize the use, operation and maintenance of the State Highway System on USFS lands. The use, operation and maintenance of the State Highway System on USFS lands occurs either through the issuance of a US DOT Highway Easement to Caltrans by the FHWA or by Special Use Permit Authorization (SUP) issued directly to Caltrans by the USFS. This guide should not be construed to replace the 1989 Memorandum of Understanding (MOU) between the USFS and Caltrans or the 2001 MOU on Perfection of Title between the California Division of Federal Highway Administration (CA Div FHWA), Caltrans and the USFS. Where there are conflicts between this Reference Guide and the 1998 and 2001 MOUs, the language in the MOUs will prevail. This guide is being provided primarily to facilitate project delivery pending revision of the 1989 MOU.

For additional information and to download the 1989 and 2001 MOUs go to Caltrans intranet site:

http://pd.dot.ca.gov/row/offices/federal_land_transfer/MOUs/?datebox=

AUTHORITIES AND REFERENCES

16 U.S.C. § 498

23 U.S.C. § § 107(d) and 317

31 U.S.C. § 9701

23 CFR § 710.601

36 CFR § 211.3

36 CFR § 251.58

1989 Memorandum of Understanding between the United States Department of Agriculture, Forest Service and Caltrans

1998 FHWA & USFS MOU

2001 Memorandum of Understanding between the United States Department of Agriculture, Forest Service, Caltrans and CA Div FHWA regarding Perfection of Title

DEFINITIONS

District: "District" as used in this guide is one of the 12 Caltrans Districts.

Region: "Region" as used in this guide means one of the two Caltrans' Regions; the North Region and the Central Region. "Districts" 1, 2 and 3 comprise the North Region and Districts 5, 6, 9 and 10 comprise the Central Region. Districts 4, 7, 8, 11 and 12 are not regionalized.

District Ranger: "District Ranger" as used in this guide is the head of one of the several ranger districts in a National Forest.

Regional USFS: "Regional USFS" as used in this guide is the Pacific Southwest Region, one of the 9 regions in the US Forest Service.

GENERAL

Caltrans may require temporary or permanent use of property owned by the United States and controlled by a federal agency. Rights of way, material sites or other interests in these lands are secured under appropriate Federal statutes.

Title 23, United States Code (USC), §§ 107(d) and 317, provide for the transfer of lands, or interests in lands, owned by the United States (U.S.) to a State Highway Department. Caltrans' need to traverse lands under jurisdiction of the USFS will be made under provisions of the Federal Highway Act of August 27, 1958 (23 USC Section 317). If the project is on the Interstate System, Section 107(d) will also apply.

Federal Highway Administration

The FHWA is the appointed lead agency for all requests to traverse federal property for a highway or highway related purpose. Though some federal agencies, including the USFS, have their own statutory authority to authorize occupancy and use of National Forest System land to Caltrans without FHWA's involvement, coordination with FHWA is recommended and encouraged in all instances.

Caltrans' Region and District Federal Land Transfer Coordinator

Effective May 18, 1998, Regions and Districts were delegated the full responsibility for the processing of Federal Land Transfers (FLT). This includes contact with FHWA.

The Region/District FLT Coordinator (FLTC) typically resides within the Right of Way organization, and is responsible for initiating discussions with the USFS through the District Ranger. Any project specific meetings should include in addition to the FLTC and USFS District Rangers, the Caltrans project manager, project engineer, and environmental staff, and the USFS Lands Officer and an environmental specialist.

The FLTC processes all requests to transfer permanent or temporary rights to Caltrans, and is responsible for the full review, final approval, and transmittal of all Federal Land Transfers to FHWA. The FLTC also works with the District design engineer to determine the real property requirements and to request maps of the proposed right of way needs. The FLTC should identify as early as possible all USFS resources, such as timber, which may have an effect on the final Right of Way (R/W) certification for the project.

PROJECT INITIATION
PREPARE DRAFT PROJECT REPORT
PERFORM ENVIRONMENTAL STUDIES

Early Project Coordination

Caltrans must coordinate with the USFS regarding the proposed state highway project at the earliest possible stage of project development, preferably at the project initiation (PID) phase. Early and frequent coordination with the USFS throughout the PID and preliminary engineering phases will help ensure the project's impacts on USFS lands are evaluated and addressed in a timely manner without delaying project development. The FLTC should arrange for an initial meeting with the USFS to provide project mapping and discuss the purpose of the project, design concepts and alternatives, environmental considerations, right of way and permitting needs, and workload. Such early coordination will facilitate identification of potential problems and collaborative development of possible solutions, as well as to help identify some of the conditions and stipulations that will need to be addressed in the FLT package to be provided to FHWA.

SECURE PROJECT APPROVAL

PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA&ED)

During the Environmental Scoping Stage of the PA&ED Phase of Highway Project:

Caltrans will consult the District Ranger regarding the laws, regulations and policies applying to the USFS lands in the proposed state highway project area. Caltrans will seek early and appropriate coordination with the USFS as Caltrans carries out any and all federal environmental compliance responsibilities it has assumed from FHWA. The USFS will always be a National Environmental Policy Act (NEPA) cooperating agency on projects located on USFS lands.

When acting as NEPA lead agency on projects for which an Environmental Impact Statement (EIS) is being prepared, Caltrans' District or Region Environmental Divisions, in accordance with SAFETEA-LU § 6002 (codified at 23 U.S.C. § 139) and 40 CFR § 1501.6 will:

- (1) Request the participation of the USFS as a cooperating agency at the earliest possible time.
- (2) Use the environmental analysis and proposals of cooperating agencies, with jurisdiction by law or special expertise, to the maximum extent possible consistent with Caltrans' responsibilities as lead agency.

As a cooperating agency the USFS will:

- (1) Participate in the NEPA process at the earliest possible time.
- (2) Participate in the scoping process.
- (3) Assume, on request of the lead agency, responsibility for developing information and preparing environmental analyses for environmental documents when the USFS has special expertise.
- (4) Make staff available, at Caltrans' request, to enhance the latter's interdisciplinary capability.

(5) Normally use USFS appropriated funds to support the project. The lead agency shall, to the extent available funds exist, fund those major activities or analyses it requests from the USFS. Caltrans should include such funding requirements in their budget requests.

During the Permit Stage of the PA&ED Phase of a Highway Project:

If a state highway project is located on USFS lands, but is not situated within an existing US DOT highway easement, then the project work outside of the existing US DOT easement, prior to obtaining a revised US DOT Easement, will require a SUP authorization. SUP authorizations are also appropriate for temporary highway-related uses when actions occur outside of a US DOT highway easement on USFS lands. If a SUP authorization is required, and requires USFS resources to review the SUP application and monitor compliance with the SUP, cost recovery may be sought by the USFS in accordance with 36 CFR § 251.58

**PREPARE PLANS, SPECIFICATIONS AND ESTIMATES;
ACQUIRE RIGHTS OF WAY; AND
OBTAIN APPROVALS, AGREEMENTS AND PERMITS**

The FLTC, as a member of the Project Development Team, coordinates with the design engineers early in the project planning or environmental document phases to determine the real property requirements and the type of FLT required. For more information concerning the FLT process, see the "Manual for Federal Land Transfers" available at: <http://www.fhwa.dot.gov/realestate/fltmanual/fltman1.htm>, and the Caltrans Right of Way Manual, Section 8.18.01.00, located at <http://www.dot.ca.gov/hq/row/rowman/manual/ch8.pdf>.

US DOT Easements

A US DOT Easement must be acquired for any permanent state highway use of USFS lands.

A US DOT Easement provides Caltrans permanent, recorded rights over U.S. land for the construction, operation, and maintenance of a highway, and the use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the required parcel of land.

Sometimes there is a need to amend an existing US DOT Easement such as when the project area adjacent to the existing easement areas needs to be incorporated into the project. For example, Caltrans acquired a US DOT Easement from the USFS ten years ago for a two lane highway, and now the proposed four lane project requires the acquisition of more land. Since Caltrans is proposing to change the "footprint", a new US DOT Easement will be requested for the additional properties. Amending an existing US DOT Easement is permitted using the same FLT process as securing a new US DOT Easement.

Special Use Permits

Occupancy of USFS land for highway related use outside of the public road or highway easement may be authorized by either temporary or annual SUP authorizations. Examples of special uses are:

- Temporary construction easement area
- Temporary detour
- Access road
- Construction staging area
- Material sources

Waste areas
Borrow pits
Maintenance sites
Channel changes
Restoration work for a slide
Seasonal location to conduct tests
Other similar items

Caltrans initiates the SUP authorization process by forwarding an application to USFS, which reviews the terms and conditions of the application. When approved by USFS, the District Director or his designee executes the permit on behalf of Caltrans. The conditions of the occupancy and use of the property are summarized in the SUP.

Special Use Permits expire within days or years of the date the permit was issued. Renewals may require a new environmental document. The permit is not recorded.

Special Use Permits are used ONLY to obtain temporary access and/or use rights. Property rights for permanent highway related facilities crossing USFS lands must be obtained through a U.S. DOT Easement.

The USFS is authorized to collect cost recovery fees for the issuance of Special Use Permit authorizations pursuant to 31 U.S.C. § 9701 as implemented by 36 CFR § 251.58.

Cost Recovery Fees apply to SUP authorizations only and do not apply to U.S. DOT Easement requests or to projects situated completely within an existing U.S. DOT Easement.

What are Cost Recovery Fees?

Cost recovery fees are application and compliance monitoring fees assessed by the USFS, pursuant to the statutes and regulations noted above, to recover its

Forest Service processing costs associated with reviewing applications for special use permits, and for monitoring compliance with these permits.

When do Cost Recovery Fees Apply?

Cost recovery fees apply only to applications for use and occupancy requiring a new SUP, when there are changes to existing SUPs, when a new SUP is required due to termination of an existing SUP, and for the monitoring of SUPs issued or amended after March 23, 2006.

Cost recovery fees do not apply to Perfection of Title activities.

What is included in SUP processing and monitoring fees?

Processing Fees include:

Reviewing applications for SUP authorization.

Conducting environmental analyses on the effects of the proposed use, i.e. Wild and Scenic River Section 7 Analysis.

Reviewing any applicant-generated environmental documents and studies

Conducting site visits.

Evaluating an applicant's technical and financial qualifications.

Making decision whether to issue a SUP authorization.

Preparing documentation of analyses, decisions, and authorizations for each SUP application.

These processing fees are to be based solely upon costs necessary for processing the particular application for a SUP authorization. "Necessary for" means that but for the application, the costs would not have been incurred and that the costs cover only those activities necessary to process the application. The costs incurred for processing an application, and thus the processing fee, depend on the complexity of the project; the amount of information necessary for the authorized officer's decision in response to the proposed use and occupancy; and the degree to which the applicant can provide this information to the USFS.

Monitoring Fees:

Monitoring fees are assessed based on the estimated time needed for the USFS to ensure compliance with the SUP during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. The monitoring fees are assessed independently of any fee charged for processing the application for the SUP. Payment of the monitoring fees is due upon issuance of the SUP.

How are Cost Recovery Fees paid?

Payment should come from preliminary engineering support funds and not from Right-of-Way funds.

Who coordinates the application of a SUP?

The FLTC typically submits the SUP application to a USFS District's Lands and Special Uses Officer. An application (or multiple applications) can also be coordinated through the USFS Supervisor's office.

The SUP Application

The SUP application package should include:

A legal description of the property needed. For material sites, the application must describe the area of the material source and the haul road by metes and bounds.

A plat or map adequately showing the area to be covered by the SUP authorization.

The estimated cost and time schedule for the construction of the project.

A copy of the proposed environmental document(s) and other supporting documents such as Coastal Zone Management (CZM) consistency determinations, archeology

reports, U.S. Army Corps of Engineers permits, etc.

Projects within a US DOT Highway Easement

If the project is primarily located within an existing US DOT easement, then review by USFS should be minimal. If there are project impacts expected outside the easement, then more USFS involvement may be needed. The USFS will make every effort to respond in a timely manner to requests from Caltrans for project review or input. If they are unable to respond in a timely manner due to the lack of appropriated funds, then they may request funds from Caltrans to cover the USFS review or input associated with the project through a Cooperative Work Agreement (Collection Agreement) pursuant to 16 U.S.C. § 498 and 36 CFR § 211.3.

What is a Cooperative Work Agreement?

A Cooperative Work Agreement (Collection Agreement) is a voluntary agreement developed between the USFS and Caltrans to allow the use of Caltrans' funds to support and expedite the work by the USFS to support a Caltrans' project. A Collection Agreement may be appropriate when the improvements will be authorized under a new US DOT easement for a state highway project to expedite project delivery at the discretion of Caltrans. A Collection Agreement may be needed when the work and impacts are entirely within an existing US DOT highway easement(s). Generally the agreement should not be needed for minor projects involving minimal USFS review, but may be appropriate when preliminary engineering support work is extensive or when there are multiple projects requiring timely responses from the USFS. When this happens, Caltrans may agree to cover USFS expenses through this agreement in order to expedite project delivery. The USFS will request this help when appropriated funding is not available and it is unable to respond to the unfunded work in a timely manner. The work the USFS will perform and the estimated cost of the work will be specified in the Collection Agreement. When utilizing a Collection Agreement, the USFS will prioritize the work identified in the agreement and expedite the work. The Caltrans Project Manager will budget, and coordinate the execution, processing and payment of USFS collection agreements utilizing preliminary engineering support funds.

The USFS tasks funded using this instrument primarily include environmental compliance review by USFS specialists, actual analysis for environmental compliance by USFS specialists, review of Caltrans' contractor work by USFS specialists, or organizing, researching and responding to resource data requests by Caltrans' environmental specialists. Examples include completing or review of biological assessments or evaluations, Section 106 certifications, completion of fire plans, etc.

Perfection of Title US DOT Highway Easements

In 2001, Caltrans, CA Div FHWA, and USFS entered into a MOU to perfect title on all existing rights of way across USFS lands in the State of California. This Perfection of Title process was designed to convert temporary rights within California (such as R.S. 2477 Rights of Way, SUP areas, and areas of no known rights) to recorded US DOT Highway Easements. The 2001 MOU is available to Caltrans staff at

http://pd.dot.ca.gov/row/offices/federal_land_transfer/MOUs/?datebox=

A Letter of Consent will be prepared by the Regional USFS to FHWA authorizing the transfer of National Forest lands in a highway easement deed to Caltrans. This work will be completed in a timely manner at Regional USFS expense.

ATTACHMENT A HOW CALTRANS BUILDS PROJECTS

