

FOREST SERVICE MANUAL  
MISSOULA, MONTANA

TITLE 5400 - LANDOWNERSHIP

Region 1 Supplement No. 5400-93-2

Effective July 1, 1993

POSTING NOTICE: Supplements to this title are numbered consecutively. Post by document name. Remove entire document and replace with this supplement. Retain this transmittal as the first page of this document. The last supplement to this Manual was 5400-93-1 to FSM 5430.

This supplement supersedes 5400-91-3 to FSM 5460.

Document Name	<u>Superseded</u>	<u>New</u>
	<u>(Number of Pages)</u>	
5460	16	19

Digest:

5460.11 - Provides guidance for rights established by law or prescription.

5460.3 - Provides direction for use of Letters of Agreement or Assurance and Use of Categorical Exclusions. Clarifies expenditure of funds when United States has not perfected easement rights. Encourages coordination with OGC prior to recording Statements of Interest.

5460.43 - Clarifies duties/responsibilities of Title Certifiers. Provides direction on submitting copies of temporary access documents to Regional Forester.

5461.1 - Provides for public involvement when acquiring limited access.

5467.04d - Updates list of Cost-Share Certifiers.

5467.51 - Clarifies direction for submitting excess cost balance information.

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Regional Forester

TITLE 5400 - LANDOWNERSHIP  
R-1 SUPPLEMENT NO. 5400-93-2  
EFFECTIVE 7/1/93

5460.11 - Road and Trail Right-of-Way Acquisition.

1. Rights-of-Way for Public Highways Under the Lode Mining Law of 1866; 43 U.S.C. 932; Revised Statute (RS) 2477.

Under this Act, Congress granted rights-of-way for public highways and county roads constructed across public domain before the lands received National Forest Status. Although the 1866 Act was repealed by the Federal Land Policy and Management Act in 1976 (43 U.S.C. 1715), rights which preexisted the establishment of the National Forest are preserved.

If this means of establishing use by the Forest Service is utilized, the recommended approach is for the Forest to work through county officials to have the road declared a county road.

Refer to FSM 2734.5 - Rights-of-Way Granted by Statute.

2. Rights-of-Way by Appropriation Under the Tucker Act of March 3, 1887; 24 Stat. 505, 28 U.S.C. 1346 (a) (2), 1491.

Under the Tucker Act, if it can be established that the Forest Service affirmatively appropriated private property for road/trail use, a possessory right for the right-of-way may be established. Under the Tucker Act a private complainant must sue for compensation within 6 years after the Government takes possession of the property. A taking by appropriation confers only a right to possession and use upon the Government; title does not transfer until the landowner receives just compensation for the taking. However, if the landowner fails to sue within the 6-year statute of limitations, the right to compensation is lost. At the expiration of the statute of limitations, title would presumably pass to the Government in the event that the aggrieved landowner had failed to pursue his cause of action. Furthermore, under the Assignment of Claims Act, 31 U.S.C. 203, a landowner cannot assign a compensation claim against the Government for the taking of property, unless the compensation has already been determined and awarded by an appropriate court. Payment for the taking is due the owner at the time, not the owner at an earlier or later date.

Before the right can be asserted by the Government, the Government must actually be prevented from using the property interest. In such cases, the person opposing the Government's use becomes a trespasser and can be cited under applicable regulations. Furthermore, the property interest being appropriated under the Tucker Act must be established prior to 1971, i.e., passage of the Uniform Law 91-646, 84 Stat. 1904, 42 U.S.C. 4601 et seq., (see particularly 42 U.S.C. 4651).

3. Rights-of-Way Under the Rule of the Wilcox Case.

This method of acquisition may have application in those rare situations where roads have been built by the Forest Service from appropriated funds on National Forest land and subsequently the

land is patented without a reservation for the road. Wilcox v. McConnel, 13 Pet. (U.S.) 496 is authority for the principle of law which is stated as follows:

" . . . whensoever a tract of land shall have been only legally appropriated by any purpose, from that moment, the land thus appropriated becomes severed from the mass of public lands; and . . . no subsequent law (of general application), or proclamation, or sale, would be construed to operate upon it, although no reservation was made of it." *ibid.* at 513

Applying the rule of the Wilcox case, the Solicitor for the Department of Interior in 1951 stated: "Although the instructions call for an exception of the type stated, it is clear that Interior did not consider it necessary to incorporate an express exception in a patent for the purpose of retaining title to the improvements, together with the right to maintain and use the same. The exception is made by operation of law, under the rule of the Wilcox case, whenever lands are appropriated to a public use under authority of law; and Interior has twice ruled that National Forest lands are so appropriated when used for facilities which the Forest Service is authorized to construct and maintain.

Thus, in order for the Forest Service to avail itself of the Wilcox doctrine in a right-of-way case, two requirements must be met: 1) The land must be appropriated to a particular public use prior to passage of title to the landowner, and 2) the appropriation must be made under "authority of law", i.e., pursuant to a law of Congress. Bills appropriating money to the Forest Service for the construction and maintenance of roads and trails have sufficed as adequate legal authority in the past.

#### 4. Rights-of-Way by Prescriptive Use Under State Law.

If a State recognizes the establishment of a road/trail through prescriptive use and the requirements for adverse possession can be shown, a right-of-way over private property may be established.

The following information has been extracted from the State Codes:

#### Montana

To establish the existence of an easement prescription, the party so claiming must show open, notorious, exclusive, adverse, continuous, and uninterrupted use of the easement claimed for the full statutory period. The statutory period in Montana is 5 years. Title to an easement acquired by prescription is as effective as though evidenced by a deed.

Public Highway - Public highway may be established by prescription, without color of title, by proof of travel over it by the public, as a public highway.

The law appears to recognize the doctrine that adverse use by the public for the period named in the statute of limitation will establish a highway by prescription, but the title will be confined to the very way traveled during the period, unless an attempt has been made by the proper authorities to erect a highway when the extent of the title will be measured by the claim exhibited by the proceeding. A highway by prescription does not exist unless the proof

established that the general public has used the way, without substantial interruption for the time fixed by the statute of limitation applicable to the lands.

Proof of the establishment of a highway by prescription overcomes the presumption which would otherwise prevail; namely, that the use by the public for a long period of years has been in subordination to the legal title.

#### Idaho

Adverse Possession - Title by adverse possession cannot be acquired against the State. This section does not bar suit by State to recover lands reserved for, or dedicated to some public use, such as school land. There are certain categories of State-owned land which are immune from acquisition by adverse possession, the court having previously held that there are two such categories--land dedicated to a public use, and school endowment land. However, the former bed of a navigable river which changed its course falls in no immune category.

Prescriptive right-of-way is acquired by open and continuous use for more than 5 years.

Possession, to be adverse, must have been for the whole period prescribed by statute, actual open, visible, notorious, continuous, and hostile to landowner and world at large. The burden is on the party claiming the right by prescription to show the extent and the amount of his uses and of the right claimed.

#### South Dakota

Title by Prescription - Occupancy for period prescribed by any law of this State as sufficient to bar an action for the recovery of property, confers a title thereto denominated a title by prescription, which is sufficient against all.

Seizing or possession within 20 years required for action to recover real property or possession--no action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestors, predecessors, or grantor was seized or possessed of the premises in question within 20 years before the commencement of such action.

Dedication to public by continuous use, work and repair of road--wherever any road shall have been used, worked, and kept in repair as a public highway continuously for 20 years; the same shall be deemed to have been legally located or dedicated to the public, and shall be and remain a public highway until changed or vacated in some manner provided by law.

#### North Dakota

Public Roads by Prescription - All public roads and highways within this State which have been or which shall be open and in use as such, during 20 successive years, hereby are declared to be public roads or highways and confirmed and established as such whether the same have been laid out, established, and opened lawfully or not.

To establish a highway by prescription, there must have been general, continuous, uninterrupted and adverse use by the public under a claim or right, for a period of 20 years.

Hostile use of road over private land necessary to establish prescriptive right means a use inconsistent with owner's right to exclusive use, does not imply enmity or ill will, and is consistent with friendly relations between user of road and landowners.

A public highway need not be opened by officials, but the people may open it themselves by taking possession and using it.

5460.3 - Policy.

7. Letters of Agreement or Assurance may be useful in addressing landowner concerns that cannot be appropriately addressed in the easement. Examples might be noxious weed control, signing, specific maintenance responsibilities, surface restoration, traffic control, etc.

Refer to FSH 5409.17 (sec. 12.43) Assurance to Grantor.

If the landowner insists, a Letter of Agreement/Assurance may be recorded with the easement. This is not advisable, however, as it will then show up as a title encumbrance that has to be dealt with in all future landowner transactions. It is preferable to handle these letters the same as we do other management agreements, such as Memorandums of Understanding, Maintenance Agreements, Road Right-of-Way Construction and Use Agreements, etc.

8. The NEPA process is intended to help Line Officers make informed decisions that are based on understanding of environmental consequences and take actions that protect, restore, and enhance the human environment. As such, NEPA requires the assessment and disclosure of direct, indirect, and cumulative effects.

Refer to FSH 1909.15 ENVIRONMENTAL POLICY AND PROCEDURES HANDBOOK.

The environmental consequences (direct/indirect/cumulative) associated with the acquisition of a right-of-way must be addressed under NEPA and a determination made if the acquisition, including any associated construction, reconstruction, or other project development, can be categorically excluded from documentation in an Environmental Impact Statement (EIS) or Environmental Assessment (EA). "Scoping" is an integral part of environmental analysis and is critical to this determination.

For categories of actions excluded from documentation in an EIS or EA, refer to FSH 1909.15 CHAPTER 30 - CATEGORICAL EXCLUSION FROM DOCUMENTATION, Section 31 - CATEGORIES OF ACTIONS EXCLUDED FROM DOCUMENTATION, 31.1b - Categories Established by the Chief.

2. Rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.

Execution, modification, or termination of Road Right-of-Way Construction and Use Agreements.



6. Acquisition of land or interest in land.

Acquisition of easements for existing roads/trails involving no "extraordinary circumstances" and no foreseeable associated construction, reconstruction, or other project development.

Cost-Share and FRTA Programs: Chapter 10 of the R1 Road Right-of-Way Construction and Use Agreement Handbook (FSH 5409.21) deals with NEPA requirements relative to these cooperative road development programs.

9. Solve road and trail title questions as soon as feasible.

Many of the Region's system trails and a number of the system roads are not covered by recorded easements, and there is a growing movement by current landowners to challenge continued National Forest use of these facilities.

Three legal interest levels for acquisition of rights-of-way for these long-existing roads and trails across non-Federal lands are:

Level I - The Forest Service assumes Federal road and trail easements have been acquired by prescription, appropriation, or Wilcox Rule without benefit of status checks.

Level II - The Forest Service assumes Federal road and trail easements have been acquired by prescription, appropriation, or Wilcox Rule when based on status checks.

Sources of Status evidence may include: (1) retired Forest Service or other agency employees; (2) local citizens who have historical knowledge of the facility; (3) historians; (4) local historical publications; (5) vintage maps/photographs/aerial photographs; (6) USGS records/plats; (7) Forest Service records on capital investment expenditures, road/trail maintenance, grazing surveys/allotment management, plantations, land classification, timber inventories; (8) Forest scrapbooks; (9) County records; and (10) old newspapers.

Refer to R1 SUPP to FSH 5409.17 (sec. 11) for an example of an Affidavit To Establish Prescriptive Right.

Whenever OGC advice and assistance is needed, the case should be submitted to the Regional Office for coordination with OGC.

Level III - The Forest Service perfects titles by: (1) acquiring road or trail easement deeds from the present landowners; (2) initiating new, formal condemnation actions; or (3) initiating quiet title suits in the courts.

10. When the United States has not perfected easement rights, the Forest Service has no legal authority for the following until the necessary rights-of-way are acquired:

- a. Spend FR&T dollars for construction (relocation) or reconstruction of the facility outside of the right-of-way area established under appropriation, prescription, etc.

- b. Nominate trails for inclusion in the National Recreation Trails System.

11. Statement of Interest. Whenever an action or threat interferes with continued use and management of a road or trail and the Forest Service has not perfected title, the following actions need to be taken by the Forest Supervisor:

- a. Evaluate status evidence to determine historic United States investment, management, maintenance, and use of the facility.
- b. If supported by historical evidence, execute a Statement of Interest, using the example in R1 Supp to FSH 5409.17 (sec. 11) as a guide. Forests are encouraged to coordinate with the RO so that OGC can be consulted prior to recording Statements of Interest in the county records. This is a precaution against clouding a landowner's title without sufficient evidence and inviting a "Slander of Title" claim.
- c. Notify the private landowner by certified mail that the United States has acquired an easement across the property.
- d. Submit the recorded original to the Regional Office for the permanent files.

#### 5460.43 - Regional Foresters.

##### Director of Lands and Minerals.

The Director of Lands and Minerals is authorized to approve and execute documents related to rights-of-way acquisitions. Signature will be over the Director's own title.

##### Forest Supervisors.

Forest Supervisors are delegated the responsibilities stated in FSM 5460.43 with the following additions/limitations:

Forest Supervisors are also authorized to execute termination documents when it has been determined that the Forest Service has no further need for an easement or segment of an easement, and when there are provisions for termination in the easement document. Prior to execution, the termination document must be certified "correct as to consideration, description, and conditions", dated, and signed on the left margin of the first page by an employee knowledgeable of the correct format to be used and the transportation needs on the Forest.

#### 4. Settlement Offers.

##### a. Private Land

- (1) Forest Supervisors are authorized to make offers in settlement, or accept counteroffers, up to \$2,500 in excess of the appraised value of an easement after making the written analysis required by FSH 5406.17 (sec. 14.4) and determining that such action is in the public interest.

The written analysis needs to cite the appraised value and will be included in the the title assembly for final title approval.

(2) When Condemnation Appears Inevitable. If condemnation appears inevitable after the initial negotiations, the Forest Supervisor is then authorized to make additional counter offers up to the fee land value.

If the case is not negotiated, the Forest Supervisor's official condemnation notice to the landowner will contain the fee land value offer.

When condemnation is submitted to the Chief, the Regional Forester will normally recommend that the amount of the fee land value of all the land within the right-of-way be deposited in the court after the Declaration of Taking is executed by the Assistant Secretary. This would be management's offer to settle decision outside the required appraisal process.

Authority to approve payments exceeding \$2,500 in excess of the appraised value of an easement remains with the Regional Forester. A request to the Regional Forester needs to include:

- (a) Approved appraisal report.
- (b) Estimated fee value of the land to be occupied by the easement.
- (c) Analysis required in FSH 5409.17 (sec. 14.4).

b. State, County, or City Land. This delegation regarding other Government lands reflects:

- (1) Public lands are involved.
- (2) Government agencies are involved on both sides.
- (3) The States, counties, and cities normally appraise their right-of-way grants similarly to the approach used by the Forest Service for its special uses. This approach is standard practice throughout Government.
- (4) The Forests are not required to appraise these rights-of-way. Nevertheless, it is important that the Forest appraisers be assured that the grantor's asking prices do not exceed fee land values.

The Forest Supervisor is authorized to approve an offer to pay for the right-of-way easement across State, county, or city land up to the anticipated fee value of the land to be occupied by the easement.

Authority to approve a payment offer exceeding the anticipated fee value of the land to be occupied by the easement remains with the Regional Forester. A request to the Regional Forester needs to include:

(1) Anticipated fee value of the land to be occupied by the easement. (No formal appraisal is required.)

(2) Amount requested by the grantor.

(3) Reasons behind the grantor's request.

7. On existing road and trail systems across non-Federal lands, Forest Supervisors are responsible for and shall:

a. Continue to use, operate, control and maintain, under Levels I and II, existing roads and trails within the Region not covered by written easements. These levels do not allow for any road or trail construction/reconstruction or relocation outside of the right-of-way area established under appropriation, prescription, etc. The Forest Service needs to exercise jurisdictional responsibilities and control use under the Secretary of Agriculture's Rules and Regulations at Level I. Some landowners may challenge this authority. Such cases will be included in the Forest's annual rights-of-way acquisition program and Level II applied. If the landowner is not convinced based on Level II, then Level III is applied.

b. Monitor roads and trails that cross non-Federal lands, and when land management activities such as logging, road building, fencing, or signing/orange paint threaten to breach the facility or restrict National Forest use, immediately contact the landowner to prevent such breaches.

c. Complete Level II by priority when landowners will not voluntarily execute easement deeds for facilities which cross the non-Federal lands. Status information will be collected and assembled on individual facilities as provided in 5460.3.

After a road or trail is placed in Level II, the Forest Supervisor shall advise the private landowner by certified mail that the United States has acquired an easement across the property. Followup should be made to see if the landowner will then execute an easement deed to properly identify this property encumbrance in the county records allowing the United States to perfect its title. If the landowner chooses not to sign the deed, the Forest Service will, for an interim period, still operate on the premise the United States has the easement. It is at this level that a "Statement of Interest" is considered. The goal, however, is Level III.

In Level I or II, Forest officers may assert Federal right-of-way ownership through such sections as citing the landowners for trespasses and removing privately installed signs/orange paint, gates, fences, or other barricades from the facility. When timber harvest or other landowner operations are anticipated to damage road/trail segments, the landowners should be notified in writing that the United States ownership rights need to be protected.

d. Continue efforts to program toward Level III for all the Forest system roads and trails crossing non-Federal lands.

e. Apply the reciprocity provision contained in the Secretary's Regulations for special uses toward obtaining written conveyances.



8. Certification of Title Assembly.

a. Certifier's Duties/Responsibilities. The certifier acts as a quality control specialist serving to assure the Regional Forester, the Office of General Counsel, and the Forest Supervisor that title packages are accurate and complete. The certifier will verify that title is vested in the name of the United States of America and all Schedule B exceptions are either eligible for administrative waiver or appropriate curative actions have been taken. In addition, the certifier will prepare the title opinion for OGC signature and a cover letter submitting the title assembly from the Regional Office to OGC.

Title assemblies are "certified" when the designated individual executes the "Checklist for Final Title Assembly" and includes the title opinion. Upon receipt of the certified title package, the Regional Office will verify that all required documents are included, complete a cursory review of the package, monitor case processing, and provide OGC with staff assistance.

It is intended that certifiers submit title assemblies of such high quality that only minimal review is necessary in the Regional Office. Performance of the designated individuals is monitored through Regional Office sample reviews/audits. The Forest Supervisor will be notified annually of the results of those reviews.

b. Designation of Individuals to Certify Title Packages: Forest Supervisors may request that any member of their Lands staff be designated to certify title packages by providing documentation that the following minimum qualifications for training, experience and expertise in title processing have been met:

(1) Formal training that includes courses in real estate law, public land law, and documented self-study of FSM 5460, FSH 5409.17, the Department of Justice publications: "Standards for Preparation of Title Evidence in Land Acquisitions by the United States" and "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies."

(2) Four years of case processing experience. Experience must involve a substantial amount of title work.

(3) Demonstrated knowledge of accepted title practices.

(4) Submission of sufficient title packages of a substantive nature to demonstrate their technical knowledge of title work and their ability to consistently prepare cases for OGC Title Opinion.

Upon receipt of the request, the Regional Forester will review the information submitted and notify the Forest Supervisor whether the designation will be made.

c. Designated Certifiers: The following individuals have met the requirements and are designated to certify rights-of-way title packages.

Name	Forest
Margaret Meckel	IPNFs
Margaret Peterson	Lolo

9. Last Owner Search. Forest Supervisors may be authorized to use a search of records in lieu of title evidence obtained from approved title companies and abstractors when

- a. The consideration for easement is \$1,000 or less.
- b. The improvement to be constructed on the easement is less than \$10,000 in cost.
- c. The case conforms with requirements in the "STANDARDS" for a last owner title search.
- d. The deed signed by the grantor contains a general warranty clause.
- e. The results of the record search are documented in the format of a Last Owner Title Search as shown in R1 Supp to FSH 5409.17 (sec. 21.14).

10. Forest Rights-of-Way Acquisition Inventories and Acquisition Schedules.

Each Forest Supervisor will:

- a. Develop and maintain a long-term Forest inventory of all needed rights-of-way as identified through:
  - The National Forest Management Planning Process.
  - Access initiatives/partnerships with States, other agencies, landowners, and special interest groups.
- b. From the long-term Forest inventory of needed rights-of-way, develop and maintain a Forest Acquisition Schedule showing prioritized planned acquisitions by fiscal year for the next 5 years.
- c. Along with the Forest's Annual Rights-of-Way Acquisition Program Accomplishment Reports submitted by November 1 of each year, also provide the Regional Office with an update of the long-term Forest inventory of needed rights-of-way and a summary of the Forest Acquisition Schedule showing Planned rights-of-way acquisitions for the next 5 fiscal years.

The long-term Forest Rights-of-Way Inventory needs to be report in the following format:

Example:

Forest	State	Number of Access Corridors <sup>1</sup>	No. of Cases <sup>2</sup>	Miles of Rights of Way
Clearwater	ID	72	110	92_____

<sup>1</sup>/A corridor is an access travelway that links National Forest lands with a public road system. A single corridor may involve more than one right-of-way case but is to be reported only once.

Includes access associated with Cost-Share Agreements.

<sup>2</sup>/For planning purposes, the number of cases relates to the number of landowners crossed by the right-of-way facility. If more than one segment of the facility will cross property in the same ownership, it is considered one case. If more that one facility will cross the same landowner, it is counted as one case for each facility.

The summary of the Forest Acquisition Schedule (5 FYs) needs to be reported in the following format:

Example:

Forest	State	Number of Access Corridors <sup>1</sup>	Type of Facility	Number of Cases <sup>2</sup>	Miles of Rights of Way
Clearwater	MT	16	Road	25	21
		2	Trail	4	6
		1	Pipeline	1	2
		1	Parking Area	1	(each)

<sup>1</sup>/A corridor is an access travelway that links National Forest lands with a public road system. A single corridor may involve more than one right-of-way case but is to be reported only once.

Includes access associated with Cost-Share Agreements.

<sup>2</sup>/For planning purposes, the number of cases relates to the number of landowners crossed by the right-of-way facility. If more than one segment of the facility will cross property in the same ownership, it is considered one case. If more than one facility will cross the same landowner, it is counted as one case for each facility.

11. Temporary Access - Road Permits, Rental Agreements, and Licenses.

Upon receipt/acceptance, Forest Supervisors will provide the Regional Office with copies of all road permits, rental agreements, and licenses used for temporary access to National Forest lands.

On those cases selected for sample Regional Office review, the Forest Supervisor shall also furnish any NEPA documentation, transportation analyses, and other support material relative to the decision to secure temporary rather than permanent access rights.

5460.5 - Definitions.

7. Appropriation - The exercise of the sovereign power of eminent domain utilized prior to the existence of a formal condemnation procedure by a physical taking, leaving the landowner to sue for compensation.

8. Jurisdiction. The authority, capacity, power, or right to act.

9. Prescription. A means of acquiring an easement under adverse possession pursuant with State law.

10. Reconstruction. Work performed to increase road capacity, reduce user transportation costs, eliminate progressive environmental damage, or improve traffic safety.

11. Status. Standing, state, or condition. It also means estate, because it signifies the condition of circumstance in which one stands with regard to his/her property.

12. Trail. A general term denoting a way for purposes of travel by foot, stock or trail vehicles.

5461.1 - Rights-of-Way for Roads or the Forest Development Road System.

Rights-of-way must be wide enough to accommodate all planned construction/reconstruction and all foreseeable management needs. Deed language (FSH 5409.17, Chapter 10) providing for additional width for cuts and fills is meant to cover only unforeseen changes or occurrences. Therefore, it is extremely important to have a good facility design so that a right-of-way of adequate width can be obtained. Even though we may legally temporarily occupy land outside of the right-of-way area for the purpose of maintaining the road/trail, it is often helpful to ask, "If the landowner were to fence the right-of-way limits, would we be able to reasonably manage/maintain the facility without damage to the fences?" This will help in determining the appropriate right-of-way width.

Normally, the following minimum widths should be acquired:

- Roads: 66 feet
- Trails: 20 feet
- Telephone lines/conduits: 15 feet
- Fences/ditches/pipelines: 15 feet
- Stock driveways: 66 feet

A narrower right-of-way may be acquired for roads, trails, and stock driveways if the landowner insists and if it is consistent with the facility design and with foreseeable management needs.

2. Any limitation on public access shall be considered during the project scoping process. If access may be limited, the public and interested groups shall be provided an opportunity to comment on the limitation. Any comments received shall be addressed in the environmental analysis and included in the NEPA documentation.

#### 5465 - RIGHTS-OF-WAY FROM PUBLIC AGENCIES

5465.1 - Bureau of Land Management. The objective of Exhibit A in the Right-of-Way Reservation is to identify the road(s) being conveyed to the exclusion of other roads. On a case basis, Exhibit A should exceed the minimum requirements set forth below when conditions exist such as additional, applicable data or complicated landownership such as subdivision.

1. Centerline Survey. A centerline survey of the road geometry is not required. The centerline survey may be used to plot the road location.

2. Property Corners and Lines. A diligent search for property corners will be made and all ties will be on property lines. The centerline of each road on the Right-of-Way Reservation exhibit shall be referenced to the land net by at least two field or photogrammetric ties to found corners except that if the centerline of the road is intersected at only one point by a property line, only one measured tie to a found corner is required.

Property ties are not required when the Right-of-Way Reservation is for an existing road(s) shown on an orthophoto(s) or USGS quad map(s) from which the exhibit is prepared.

3. Survey Requirements. The positional accuracy of the measurement will be commensurate with the survey method used or the value of the land and shall not exceed 0.4 percent of the straight line distance from the found corner to the road along the subdivision line up to a maximum positional tolerance of 20 feet.

4. Exhibit A. The base for the exhibit will be an orthophoto of 1/24,000 or larger scale, a Forest Service primary base map, or a 7.5-minute USGS quad. The scale of the actual exhibit shall be 2 inches equals 1 mile or larger.

The road(s) will be drafted on the base using centerline traverse or other survey data, photogrammetric techniques or topographic information. When a base map(s) is used in drafting the road location(s), the topographic contours and land features will be shown.

The original exhibit will be registered to the base by identifying the orthophotograph or map used and two points of alignment. It will be prepared in such a manner that legible prints up to a maximum size of 18" x 27" may be reproduced. The exhibit will show the road location, road number, property lines, 40-acre or lot subdivision, found corners, ties and base map name.

Each sheet of the exhibit should have a title block containing:

- a. U.S. Department of Agriculture, Forest Service  
U.S. Department of Interior, Bureau of Land Management
- b. Region and Forest
- c. Name and number of project
- d. Location of project by section, township, range and meridian
- e. State and county
- f. Date of exhibit
- g. Preparer block
- h. Approval block
- i. Sheet number and number of total sheets in project
- j. Scale of exhibit

Each exhibit should contain a legend showing:

- a. The meaning of symbols used to depict corners, roads, buildings, trails, streams, fences, etc.
- b. Shading or hatching symbols used to show the easement area.
- c. Line weight and style used to show road centerline, right-of-way limits, section lines, 1/4 section lines, etc.
- d. The photo symbols and place of filing if done photogrammetrically.

The name of each grantor should appear on each parcel or 1/4 1/4 section or Government lot exactly as it will appear on the reservation. Lands administered by the Forest Service should be labeled by their correct National Forest (or grassland) name or as National Forest System lands (NFSL). Lands administered by the Bureau of Land Management should be shown as "U.S. Public Land."

#### **5465.1 - EXHIBIT A IS A SEPARATE DOCUMENT**

#### **5467 - ROAD RIGHT-OF-WAY CONSTRUCTION AND USE AGREEMENTS**

##### **5467.03 - Policy.**

Department of Agriculture Easements Which Replace Prior Grants to Cooperators. There are a few old stipulations governing ingress in which the company did not bear its share of the construction costs. In such cases, the company is not entitled to receive a USDA easement without sharing.

5467.04 - Responsibility

5467.04b - Regional Foresters, Regions 1, 5, 6, and 8.

1. Journeyman Cost-Share Specialist Qualifications.

e. Successful completion of a Regional Cost-Share/FRTA Program certification examination consisting of test questions and preparation of a written certification review of a Cost-Share Supplement or FRTA test package.

In order to successfully complete the Regional certification examination, the employee must answer at least 70 percent of the Cost-Share/FRTA Program test questions correctly and prepare a certification review that would result in a corrected test package containing no major technical or mathematical errors that substantially affect the respective shares.

In order to maintain certification, a Regionally designated Journeyman Rights-of-Way Specialist (Certifier) must:

(1) Perform at least one independent Cost-Share Supplement or FRTA package certification review or one sample audit of another Certifier's review work under the supervision of the Regional Cost-Share Specialist each year.

(2) Continue to prepare certification reviews that result in Cost-Share Supplement and FRTA packages that are acceptable in all aspects and contain no major technical or mathematical errors that substantially affect the respective shares.

(3) Continue to prepare Cost-Share Supplement or FRTA packages that are acceptable in all aspects and contain no major technical or mathematical errors that substantially affect the respective shares. Packages must be "certifiable" upon initial submission.

2. Journeyman Cost-Share Specialist Duties/Responsibilities. The Certifier is a "Quality Control Specialist" serving to assure the Regional Forester and Forest Supervisor that all the individual elements of Cost-Share Supplement or FRTA packages have been properly integrated; for example, Supplement or FRTA packages are "correct in all respects".

The Certifier's role is to verify that Cost-Share Supplement or FRTA packages are consistent with approved NEPA, Transportation Analysis, and other support documents and that Cost-Share and FRTA Program policies, principles, and procedures have been correctly applied.

If the Certifier is unsure of the appropriateness of certifying a Cost-Share Supplement or FRTA package, the Certifier needs to alert the Regional Office of the situation so that the Regional Cost-Share Specialist can assist in the review/certification process.

It is not advisable for a Certifier to review/certify a Cost-Share Supplement or FRTA package which the Certifier has prepared. Packages certified by the preparer will be audited in the Regional Office.

5467.04d - Forest Supervisors. The Forest Supervisor is delegated authority to execute a Cost-Share Supplement or FRTA Agreement To Facts after it has been certified "correct in all respects", dated, and signed on the lower, left margin of the first page by one of the following Regionally designated Journeyman Cost-Share Specialists (Certifiers):

Tom Suk - Clearwater NF  
Jim Dvoracek - IPNF  
Ron Hernvall - Kootenai NF  
Ron Hawk - Lolo NF

Forest Supervisors will sign over their own name and title.

Upon execution of a Supplement, the Forest Supervisor shall send one conformed copy of the Supplement, Fact Sheet, Agreement Balance Sheet, easements, title package, and Certifier review/s to the Regional Forester.

Upon execution of an Agreement To Facts, the Forest Supervisor shall send one conformed copy of the Agreement to Facts, easements, title package, payment record/recommendation, and Certifier review/s to the Regional Forester.

On Certifier reviews selected for Regional Office sample audit, the Forest Supervisor shall also furnish NEPA documentation, transportation analyses, road construction/reconstruction plans and specifications, and other support documents.

5467.51 - Information.

By January 10 of each year, Forest Supervisors shall submit construction and excess cost information by cooperator to the RO Fiscal Services Group for consolidation into the Regional Summary of Excess Cost Balances Report (FS-5400-D). Reported information shall be on a committed (planned) and earned basis and shall reflect Forest balances by cooperator as of December 31 of the previous year.

Prior to submission, Forest Supervisors shall coordinate/reconcile report information internally and with the cooperator/s.

Forest input shall be in the general format shown in FSH 5409.21 - R1 Road Right-of-Way Construction and Use Agreement Handbook, Chapter 50 - Accounting, 54 - Reports (Exhibit 3).

The following is provided to assist in Forest input to Report FS-5400-D:

Report item 1. Construction Costs

Committed (Planned) - This is existing road "buy-in", construction, and reconstruction cost set out in a supplement.

Earned (Completed) - This is existing road "buy-in" and construction/reconstruction cost set out in a supplement that reflects work actually completed and accepted in writing.

Report item 2. Committed (Planned) Excess Costs

In any one Agreement, at the signature of a particular Supplement there is one excess cost for one of the parties (two party Agreement). This excess cost is a commitment or planned excess cost. This may be affected by future Supplements, payments or transfers between Agreement areas. It is the sum of the "excess costs" that remain under the Supplements that need to be reported in Report FS-5400-D.

Report item 3. Earned Excess Costs

This is the amount of "Committed (Planned) Excess Cost" for work actually completed and accepted in writing.

EXAMPLE:

Construction and Use Agreement Balance Sheet

Supplement No. & Date	Excess Cost		Amortization
	Govt. owes Coop.	Coop. owes Govt.	
1 8/3/86	\$100,000 50,000 (1) 25,000 (2)		(1) \$50,000 cash payment (2) \$25,000
	transfer		
2 6/17/91		\$100,000 50,000 (1)	(1) \$50,000 transfer

REPORT 5400-D:

Item 2. Committed (Planned) Excess Cost

Coop. \$25,000  
Govt. \$50,000  
Net Govt. \$25,000

Item 3. Earned Excess Cost

Note: All of the Coop. \$25,000 Committed (Planned) Excess Cost has been earned. \$10,000 of the Govt. Committed (Planned) Excess Cost has been earned.

Coop. \$25,000  
Govt. \$10,000

Net Coop. \$15,000

5467.53a - Preparation. Forest Supervisors shall submit to the Regional Office by January 31 of each year an updated plan for minimizing excess cost balances. The plan shall cover the ensuing 5 years and shall be in the format shown in FSH 5409.21 - R1 Road Right-of-Way Construction and Use Agreement, Chapter 30.

5467.53b - Plan Contents.

2. Use the following rules for applying methods:

b. - In situations where long standing excess cost imbalances will continue on a Forest and where circumstances warrant, Forest Supervisors may agree to transfer offsetting construction cost between Forests.