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**FSM 2700 – SPECIAL USES MANAGEMENT**

**CHAPTER 2720 – SPECIAL USES ADMINISTRATION**

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**Date Approved:** 12/28/2007

**Posting Instructions:** Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 2700-2006-1 to FSM 2720.

<b>New Document</b>	2720	85 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	2720 (Amendment 2700-2006-1, 04/03/2006)	72 Pages

**Digest:**

This amendment adopts without change, the direction previously contained in ID 2720-2005-1, regarding the implementation of provisions contained in a May 2002, agreement entitled “Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission.” A notice of issuance of this amendment was published in the Federal Register on December 28, 2007 (72 FR 73758). This amendment also makes minor, technical corrections throughout the chapter.

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**Digest--Continued:**

2721.23d, para. 2 – Corrects the economic indexing factor from the Implicit Price Deflator-Gross National Product (IPD-GNP) to the Implicit Price Deflator-Gross Domestic Product (IPD-GDP).

2723.71 – Replaces the word “casualty” with the words “catastrophic event” for clarity.

2726.31a – Revises the last paragraph to clarify that the Forest Service and the BLM may elect to use an interagency agreement as authorized by the Mineral Leasing Act.

2726.34a - Establishes a new code and caption, replaces two expired internet website addresses with a current internet website address, and issues direction for implementing the provisions contained in a May 2002, agreement between the Department of Agriculture, the Federal Energy Regulatory Commission (FERC), and other Federal agencies entitled “Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission.” Paragraph 1 states the objectives for implementing the procedures contained in the agreement; paragraph 2 describes the two types of FERC filing procedures; paragraph 3 provides guidance to Forest Service employees when engaged in pre-application contacts with interested proponents; paragraph 4 outlines the FERC’s role as the lead Federal agency; paragraph 5 describes jurisdictional roles when the only Federal lands to be occupied by an interstate natural gas pipeline project will be National Forest System lands, and when a proposal involves Federal lands administered by two or more Federal agencies; and paragraph 6 describes the Forest Service’s role as a cooperating agency, pursuant to the Agreement.

2728.1 – Replaces the expired handbook reference with reference to current handbook direction in FSH 2709.11, chapter 90.

2729.16, Exhibit 01 – Reformats exhibit for readability.

2729.16c – Removes the reference in paragraph 1 to “Form FS-2700-3”.

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## **2720.1 - Authority**

For further direction on authorities, see FSM 2701.

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

## **2720.3 - Policy**

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

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

## **2720.31- Permittee Housing [Reserved]**

## **2720.5 - Definitions**

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

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Special Uses Organization:

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

**2721 - RECREATION SPECIAL USES**

**2721.01 - Authority**

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

**2721.02 - Objective**

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

**2721.03 - Policy**

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

**2721.04 - Responsibility**

See FSM 2704 for responsibilities relating to issuance and administration of special use permits for recreation facilities, activities, and services.

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### **2721.1 - Group Use**

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

#### **2721.11 - Boat Dock and Wharf**

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

See FSM 2347.4 for direction relating to management of boat docks and wharfs for recreational purposes. For installations that include commercial services, such as dockage, boat repair, fuel, food, and lodging, see FSM 2721.52. See FSM 2727.22 when such improvements are nonrecreational in character.

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

#### **2721.12 - Club**

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

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

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

#### **2721.13 - Organizational Camp**

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

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

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

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For additional direction on organizational camps, see FSH 2709.11, sections 36.5 and 41.13.

### **2721.14 - Shelter**

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

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

The minimum fee for shelters is \$30 per year.

### **2721.15 - Private Camp**

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

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

The minimum annual fee is \$150.

### **2721.2 - Individual Use**

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

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

### **2721.21 - Isolated Cabins**

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

The minimum permit fee is \$150 per year.

### **2721.22 - Houseboats**

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

See FSM 2347.3 for direction relating to management of houseboats.

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

The minimum permit fee is \$150 per year.

### **2721.23 - Recreation Residences**

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

#### **2721.23a - Administration**

The following direction relates specifically to issuance and administration of special use permits for recreation residence. For recreation residence permits in Alaska, follow the additional requirements in section 1303(d) of the Alaska National Interest Lands Conservation Act. Administer recreation residence permits in accordance with the direction in FSM 2721.23a through 2721.23i and within the broad governing recreation residences and permitted uses set forth in FSM 2347.1 and Title 36, Code of Federal Regulations, section 251.50 (36 CFR 251.50).

1. Issue special use permits for recreation residence in the name of one individual or to a husband and wife. Upon issuance of a new permit that continues the use or amendment, revise authorizations that are not issued to an individual or to a husband and wife, so that the responsible person is identified.
2. Issue no more than one recreation residence special use permit to a single family (husband, wife, and dependent children).
3. Do not issue special use permits for recreation residence use to entities such as commercial enterprises, nonprofit organizations, business associations, corporations, partnerships, or other similar enterprises, except that a tract association may own a caretaker residence.
4. To the extent possible, issue all recreation residence permits in a tract, or in logical groups of tracts, with the same expiration date.

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5. To help defray costs and provide additional recreation opportunities, a holder may obtain permission for incidental rental for specific periods; ensure that rental use is solely for recreation purposes and does not change the character of the area or use to a commercial nature. Rental arrangements must be in writing and approved in advance by the authorized officer. The holder must remain responsible for compliance with the special use authorization.
6. Allow no more than one dwelling per lot to be built. In those cases where more than one dwelling (residence/sleeping cabin) currently occupies a single lot, allow the use to continue in accordance with the authorization. However, correct such deficiencies, if built without prior approval, upon transfer of ownership outside of the family (husband, wife, and dependent children).
7. When a recreation residence is included in the settlement of an estate, issue a new special use permit to the properly determined heir, if eligible, for the remainder of the original permit term, updated to reflect policy and procedural changes. Prior to estate settlement, issue an annual renewable permit to the executor or administrator to identify responsibility for the use pending final settlement of the estate. When a recreation residence is sold, issue a new term permit to the buyer, if eligible, for the remainder of the original permit term, updated to reflect policy and procedural changes.
8. Specify in the permit that the recreation residence must be occupied at least 15 days annually, the minimum acceptable period of occupancy.
9. Issue recreation residence term permits for a maximum of 20 years, except when the need for a shorter term has been determined by a project analysis in accordance with FSM 2721.23e and FSH 2709.11, chapter 40.
10. When a decision is made to convert the lot to an alternative use (FSM 2721.23e), take the following actions:
  - a. Notify the holder of the reasons and provide a copy of the decision documentation.
  - b. Allow at least 10 years of continued occupancy after notification.
  - c. Allow the current term permit to expire under its own terms and, if the holder is entitled to additional time to satisfy the 10-year notification period, issue a new term permit for the remaining period. Clearly specify any limited tenure by including the following statement in the permit:

**"This permit will expire on (insert date) and a new permit will not be issued."**

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- d. Issue term or annual permits for additional periods as needed to allow continuation of occupancy until conversion to the alternate public use is ready to begin.
11. Before the forest supervisor issues a decision to convert a lot to an alternative public use, submit the proposed decision, supporting documentation and summary of public comments, to the regional forester for review for adequacy of the documentation and analysis. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the regional forester shall instruct the forest supervisor to remedy the deficiencies and reconsider the proposed decision prior to making the final decision.
12. As with any resource allocation made in a forest land and resource management plan, the forest supervisor may reconsider a decision to continue or convert recreation residence lots to an alternative public use at any time new or changed conditions merit such reconsideration.
13. In the event a recreation residence is destroyed or substantially damaged by a catastrophic event such as a flood, avalanche, or massive earth movement, conduct and document an environmental analysis to determine whether improvements on the lot can be safely occupied in the future under Federal and State laws before issuing a permit to rebuild or terminating the permit. Normally, an analysis should be completed within 6 months of such an event.
- Allow rebuilding if the lot can be occupied safely and the use remains consistent with the forest plan. If the need for an alternative public use at the same location has been established prior to the catastrophic event, do not allow rebuilding if the improvements are more than 50 percent destroyed. If rebuilding is not authorized, in-lieu lots may be offered as provided by FSM 2347.1, paragraph 6, and FSH 2709.11, section 41.23c.
14. At the time permits are issued, advise holders that the terms of the permit require that they notify the Forest Service if they intend to sell their improvements and that they must provide a copy of the permit to a prospective purchaser before finalizing a sale. Whenever possible, the authorized officer should advise a prospective purchaser of the terms and conditions of the permit before a sale is final.
15. Do not stay a fee increase pending completion of an appeal of the fee under the administrative appeal regulations. Make any adjustments resulting from the administrative review through credit, refund, or supplemental billing.
16. During the term of a permit, terminate or revoke the use only in accordance with regulations at 36 CFR 251.60 and the terms and conditions of the permit (FSM 2347.1, para. 5). Except for revocation for noncompliance of terms of the permit, the forest supervisor shall submit proposed revocations, with supporting documentation and a summary of the public comments, to the regional forester for review prior to the forest

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supervisor's issuance of a decision. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the regional forester shall instruct the forest supervisor to remedy the deficiencies and reconsider the proposed revocation prior to making the final decision.

### **2721.23b - Applications**

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

### **2721.23c - Permit Preparation**

1. Use the Term Special Use Permit for Recreation Residence, Form FS-2700-5a, to authorize recreation residences, except as specified in paragraph 2 of this section.
2. Use the Special Use Permit, Form FS-2700-4, when:
  - a. Conversion of the lot to an alternative public use is authorized, the conversion will be delayed, and a minimum term of continued use cannot be predicted.
  - b. Continuance of the recreation residence use is conditioned on the owner's complying with specific Forest Service requirements before a term permit is issued.
  - c. The improvements are managed by a third party pending settlement of an estate, bankruptcy proceedings, or other legal action.
  - d. Year-long occupancy is authorized by the forest supervisor, at which time the improvement ceases to be a recreation residence.
3. In either permit, identify all authorized improvements associated with recreation residence use. Do not authorize use of more than the statutory maximum of 5 acres under a term permit. Authorize community or association-owned improvements, such as water systems, by a separate permit (Form FS-2700-4).

### **2721.23d - Fee Determination**

For further direction, see FSH 2709.11, chapter 30.

1. Use market value as determined by appraisal in determining the base annual fees for recreation residence lots. Determine a new base fee at 10-year intervals.
2. Adjust the fee annually by the annual (second quarter to second quarter) change in the Implicit Price Deflator-Gross Domestic Product (IPD-GDP).

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3. Use professional appraisal standards in appraising recreation residence lots for fee determination purposes (FSH 2709.11 and 5409.12).
4. Where practicable, contract with private fee appraisers to perform the appraisal.
5. Require appraisers to coordinate the assignment closely with affected holders by seeking advice, cooperation, and information from the holders and local holder associations.
6. Retain only qualified appraisers. To the extent feasible, use those appraisers most knowledgeable of market conditions within the local area.
7. Before accepting any appraisal, conduct a full review of the appraisal to ensure the instructions have been followed and the assigned values are supported properly.

**2721.23e - Recreation Residence Continuance**

See FSM 2347.1 for the general policy on recreation residence use. Follow the direction in this section and the procedures in FSH 2709.11, section 41.23, in determining whether recreation residence term permits may be issued for a new term at current lots. The permit continuance process is depicted in FSH 2709.11, section 41.23c, exhibit 01.

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

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

1. Use Is Consistent With Forest Plan. When recreation residence use is consistent with the forest plan, it shall continue. If the use has been analyzed sufficiently as part of a completed environmental assessment (EA) or environmental impact statement (EIS) completed within the 5 years prior to permit expiration, issue a new term permit upon expiration of the current term permit. Issue a record of decision or a decision notice and finding of no significant impact only if the use was not specifically approved in the appropriate decision document. If the use has changed and such change has not been analyzed sufficiently as part of a completed EA or EIS, complete the appropriate

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environmental analysis (FSH 1909.15). If the EA or EIS indicating the use is consistent with the forest plan was completed more than 5 years prior to permit expiration, additional environmental documentation is necessary (FSH 1909.15, sec. 18.03). Initiate action to issue a new term permit two (2) years prior to permit expiration.

2. Use May Not Be Consistent With Forest Plan. When the lands currently authorized for recreation residence use are allocated to alternative public uses through amendment or revision of the forest plan, and continued recreation residence use may be inconsistent with standards and guidelines, which apply to the appropriate management area, the forest supervisor shall conduct a project analysis of the alternative public use(s) (FSH 1909.15). This project analysis shall consider continuation of existing recreation residence use (through appropriate modification of the term permit provisions or amendment of the forest plan to accommodate the use) or discontinuation of the use (see FSM 2347.1 for direction on recreation residence use continuance). Decisions reached by the project analysis must comply with National Environmental Policy Act (NEPA) requirements and are subject to appeal under Department of Agriculture appeal regulations at 36 CFR part 217 and 36 CFR part 251, Subpart C.

- a. If the project analysis results in a decision to amend the forest plan so that the recreation residence use may continue, modify the provisions of the current term permits as appropriate. New term permits may be issued following current permit expiration. Additional environmental documentation may be necessary (FSH 1909.15).
- b. If the project analysis results in a decision to convert a lot to an alternative public use at some point in the future, grant the holder at least 10 years continued use from the date of the decision, unless the continued use conflicts with law and regulation, and identify the specific alternative public use(s) for which the land is being recovered. As provided by FSM 2347.1, the authorized officer may allow continued use of the lot until such time as conversion of the new use is ready to begin by issuing a new permit for the remaining period and amending the forest plan if needed.
- c. Review the project analysis decision 2 years prior to permit expiration to determine if there have been any changes in resource conditions that require another look at the decision. If the decision was made less than 5 years prior to permit expiration and the review shows that conditions have not changed, implement the project analysis-based decision. Affirmation of such decision is not appealable (36 CFR 251.83). If the decision was made more than 5 years from permit expiration and/or review indicates that resource conditions have changed, update the analysis to determine the proper action. Decisions arising from this new analysis are appealable.

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### **2721.23f - In-Lieu Lots**

When new permits will not be issued following expiration of the present permit, make a reasonable effort to provide an in-lieu lot, if available, at locations not needed in the foreseeable future (generally, the period covered by the forest plan) for alternative public uses in accordance with FSM 2347.1, paragraph 6, and FSH 2709.11, section 41.23d.

### **2721.23g - Land Exchange**

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

### **2721.23h - Cooperation and Issue Resolution**

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

1. Provide opportunity for holders and their representatives to participate in issue resolution. Where practicable, except where an imminent hazard or risk to health and safety or resources requires immediate action prior to issuing written decisions related to permit administration, consult and meet in person, or by telephone, with holders and their representatives to discuss any issues or concerns related to the permit and to reach a common understanding and agreement.
2. During forest plan amendment or revision and project analysis, seek full involvement of holders and their representatives in public involvement opportunities and activities. Encourage and solicit their input and comments.

Meet with holders and their representatives to discuss any issues or concerns arising in the planning and analysis processes and explores opportunities to resolve those issues prior to issuing a decision.

3. If a decision is appealed, utilize the opportunities provided in the appeal rules (36 CFR part 215, part 217, and part 251, subpart C) to discuss the appeal with the appellant(s), intervenor(s) and/or their representatives, together or separately, to explore opportunities to resolve the issues by means other than review and decision on the appeal.

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### **2721.23i - Noncompliance**

Give written notice and provide a reasonable opportunity for a holder to correct special use permit violations before terminating the use for noncompliance with the permit conditions (36 CFR 251.60(e)). Revocation for noncompliance shall be only for a breach of a permit provision(s) that continues after notice and a reasonable opportunity for correction has been given (FSM 2347.1, para. 5).

### **2721.23j - Lot Restoration**

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

### **2721.24 - Caretaker Residence**

Refer to FSM 2347.12 for the policy on caretaker residence permits.

### **2721.26 - Black Bear Bait [Reserved]**

### **2721.3 - Lodging**

Lodging covers concessioner-operated facilities that provide overnight accommodations.

See FSM 2343.3 for direction relating to management of lodging and overnight accommodations. Lodging is normally permitted as an adjunct to a resort permit and not as a stand-alone business.

### **2721.31 - Private Lodging**

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

See FSM 2347.6 for direction relating to management of private lodging on National Forest System land.

Calculate fees for private lodging on the basis of charging for both private and public use. See FSH 2709.11, Special Uses Handbook, for instructions on calculating private lodging fees.

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### **2721.32 - Hotel, Motel**

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

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

Normally, authorize hotel and motel facilities by term permit under the Act of 1915 (FSM 2701).

Calculate fees for hotels and motels under the graduated rate fee system (FSH 2709.11). The minimum fee for this use is \$300 per year.

### **2721.33 - Resort**

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

1. Determine the minimum public services to be provided by the permittee and those services that may be optional. Make these a condition of the permit. See FSM 2343 for direction relating to management of the various types of resorts permitted on National Forest System land. See also FSM 2344 for policy on permitting use of Government-owned resorts.
2. Except for ski areas authorized under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) and those ski areas which elect to have their permit fees calculated under section 701 of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 497c; FSH 2709.11, sec. 38), calculate resort fees under the graduated rate fee system (FSM 2715.11). The minimum fee is \$300 per year.
3. Ensure that the required review by the regional forester is completed prior to issuance of a permit where the capital investment to be authorized exceeds or is expected to exceed \$500,000 for resorts.

### **2721.34 - Recreation Lodging Use of Government-Owned Buildings [Reserved]**

### **2721.4 - Facility Related Activities**

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This category involves recreation activities that utilize facilities and/or National Forest System land.

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

**2721.41 - Campground and Picnic Ground**

This designation includes camping and picnicking when these activities are the primary uses permitted. Camp and picnic areas developed by non-Federal public agencies, as well as permittee-operated sites, are included.

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

See FSH 2709.11, Special Uses Handbook, for direction on computing fees for use of National Forest System land for camping and picnicking.

**2721.42 - Cave, Cavern**

This designation involves management to permit public viewing of caves and caverns.

Authorize concessioner operation of caves or caverns that have spectacular public viewing opportunities. Base the decision as to the type of permit to issue (term or annual) on the required investment by the private sector. Normally, issue a prospectus if the visitor-day potential warrants a permittee operation.

See FSM 2343.9 for policy relating to management of caves and caverns.

Calculate fees for concessioner operation of caves and caverns under the graduated rate fee system (FSH 2709.11).

See FSH 2709.11, Special Uses Handbook, for instructions relating to issuance of permits for noncommercial exploration of caves and caverns by individuals or groups.

**2721.43 - Golf Course**

This designation involves golf courses developed at existing concession sites on National Forest System land, where there was a definite public need for such facilities.

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See FSM 2341 for direction relating to development and management of golf courses on National Forest System land.

Calculate fees for golf courses under the graduated rate fee system (FSH 2709.11) unless National Forest System land is less than 10 percent of the land involved, in which case, use an annual fee based on rental data or land value.

The minimum fee is \$30 per year. See FSH 2709.11, Special Uses Handbook, for instructions on fee calculations.

### **2721.44 - Park, Playground**

This designation includes uses that are usually local community ventures. They are generally discouraged on National Forest System land.

See FSM 2340.3 and FSM 2341 for direction relating to development and management of parks and playgrounds on National Forest System land.

The minimum fee is \$30 per year.

### **2721.45 - Racetrack**

This designation includes racing activities where continuing land occupancy by more or less permanent structures and facilities has been permitted. New tracks are not authorized.

See FSM 2341 for direction relating to development and management of existing racetracks on National Forest System land.

The minimum fee is \$300 per year. See FSH 2709.11, Special Uses Handbook, for instructions on computing fees.

### **2721.46 - Target Range**

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

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

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See FSM 2335.4, 2340.3, and 2343.9, and FSH 2709.11, section 41.46, for further direction on requirements related to target ranges, including the process for special use authorizations, National Environmental Policy Act (NEPA) analysis and documentation, the environmental stewardship plan, and the safety plan.

The minimum annual land use fee is \$30. Use the graduated rate fee system (FSH 2709.11) to calculate fees for commercial operations.

**2721.47 - Trailer Court or Camp**

This designation includes commercial trailer courts financed with private capital and located on National Forest System lands. Authorize trailer courts and camps when such use is necessary and desirable under guidelines described in FSM 2343.3 and 2343.7.

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

Calculate fees for trailer courts and camps under the graduated rate fee system (FSH 2709.11). The minimum fee is \$300 per year.

**2721.48 - Tramway**

This designation includes tramways operated for recreation purposes. It does not include tramways at winter recreation sites (FSM 2721.6). Tramways operated for other than recreation purposes are covered in FSH 2709.11, Special Uses Handbook.

See FSM 2340.3 and FSM 2343.9 for direction relating to development and management of tramways on National Forest System land.

Include provisions in the permit that require compliance with American National Standards Institutes (ANSI) B77 Standard for construction and operation of tramways.

Calculate fees for tramways under the graduated rate fee system (FSH 2709.11).

**2721.49 - Recreation Event**

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

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Require performance bonds (FSM 2713.1) when needed to ensure return of the site to a satisfactory condition. Require permittees to furnish or arrange for appropriate liability insurance (FSM 2713.3), law enforcement, crowd control, safety, and sanitation. Include concession stands, vendors, and so forth, in the parent permit. Provide for subleasing in the permit.

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

Authorize events to be held at permitted commercial public service sites through the area permittee.

Authorize exclusive film, radio, or television coverage in the parent permit. In this circumstance, the film or broadcast company becomes a sublessee of the permittee.

### **2721.5 - Facility Related Services**

This category includes concession facilities developed to provide service to the public taking part in recreation activities.

Authorize and administer service facilities that are developed as a part of a resort facility, either lodging or winter recreation, under the resort permit. Authorize and administer combinations of services, or services and activities (FSM 2721.4) that are not a part of a resort facility, under a permit carrying the designation of the predominant service or activity.

Direction for these concession operations is covered in FSM 2343.

### **2721.51 - Bathhouse, Beach**

This designation includes bathhouses and beaches when they can be operated on a concession basis and are not part of a resort operation. These frequently involve Government-owned improvements.

See FSM 2343.9 for direction relating to management of bathhouses and beaches on National Forest System land.

Calculate fees for bathhouses and beaches under the graduated rate fee system and/or the Granger-Thye Act (where Government-owned facilities are involved). See FSH 2709.11, Special Uses Handbook, for instructions on fee computations.

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### **2721.52 - Marina**

This designation includes a combination of waterfront uses that are boating oriented. These uses may include a dock or basin providing secure moorings for all types of boats, launching ramps, the supplying of food, water, fuel, repair, and other facilities or services.

See FSM 2343.2 for direction relating to management of marinas on National Forest System lands and waters.

Calculate fees for marinas under the graduated rate fee system (FSH 2709.11).

When a marina's business includes boat rental service, require compliance with State boat laws and the Federal Boating Act of 1958 (Pub. L. 89-911, 72 Stat. 1754) in the permit. Require the permittee to post rules for safe operation of boats at each boathouse, dock, or wharf.

### **2721.53 - Outfitter and Guide Service**

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

See FSM 2343.8 and FSH 2709.11, Special Uses Handbook, for direction relating to management of outfitting and guiding services on National Forest System lands and waters. In addition:

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

Calculate outfitter and guide fees as defined and described in FSH 2709.11, Special Uses Handbook.

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### **2721.54 - Rental Service**

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

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

Calculate fees for rental services under the graduated rate fee system (FSH 2709.11).

### **2721.55 - Restaurant**

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

See FSM 2343.4 for direction relating to management of restaurants on National Forest System land.

Calculate fees for restaurants under the graduated rate fee system (FSH 2709.11).

### **2721.56 - Service Station**

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

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

Calculate fees for service stations as outlined in FSH 2709.11, Special Uses Handbook.

### **2721.57 - Store, Shop, Office**

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

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

Calculate fees for stores and shops under the graduated rate fee system and for offices on the basis of the value of the land for the use permitted (FSH 2709.11).

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### **2721.58 - Vendor, Peddler**

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

See FSM 2343.5 for direction relating to peddler permits on National Forest System land.

See FSH 2709.11, Special Uses Handbook, for instructions on calculation of fees for peddler permits.

### **2721.6 - Winter Recreation**

Winter recreation refers to all facilities, activities, and services related to a winter recreation operation. Developments may include a complete resort facility, portions or all of slopes or lifts for a facility located partially on private land, and snow-play (FSM 2721.65). Ski activities such as ski schools are also included.

### **2721.61 - Winter Recreation Resort**

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

Review by the regional forester is required prior to issuance of a permit where the capital investment to be authorized exceeds or is expected to exceed \$1 million for winter sports resorts.

### **2721.61a - Permit Conditions**

Normally, authorize the more costly elements of the development, such as base lodge and related buildings and uphill equipment, under a term permit. Authorize by an annual special use permit ski trails and other land disturbances, for which the permittee should not be reimbursed in the event the permit is terminated prior to its expiration date. Ensure that all of the area necessary for the operation is covered by permit.

### **2721.61b - Permit Fees**

Calculate fees for winter recreation permits under the ski area permit fee system established by 16 U.S.C. 497c (FSH 2709.11, sec. 38) or under the graduated rate fee system (GRFS) (FSM 2715.11) as follows:

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1. Permit Fee System for Ski Areas Authorized Under National Forest Ski Area Permit Act of 1986. For ski areas authorized under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b), calculate permit fees under the permit fee system established by 16 U.S.C. 497c and set out in FSH 2709.11, section 38.

2. Permit Fee System for Ski Areas Authorized Under Organic Act of 1897 and Term Permit Act of 1915. For ski areas authorized under the Organic Act of 1897 (16 U.S.C. 551) or the Term Permit Act of 1915 (16 U.S.C. 497), provide holders the opportunity to elect the fee system in 16 U.S.C. 497c (FSH 2709.11, sec. 38). Do not require conversion of such authorizations to a permit issued under the National Forest Ski Area Permit Act of 1986.

If the holder does not elect to have permit fees calculated under the ski area permit fee system in 16 U.S.C. 497c, continue to calculate fees according to the method specified in the holder's permit (FSM 2715.11).

For nordic areas where primarily outfitting and guiding activities are conducted, continue to apply the permit fee system specified in the existing permit. Refer to FSM 2721.61e, paragraph 4, for direction on the characteristics of a nordic operation eligible for authorization under the National Forest Ski Area Permit Act of 1986 and for applicability of the permit fee system to such areas, as set out in FSH 2709.11, section 38.

3. Permit Fee System for Operations That Include Incidental Ski Activities or Facilities. For resorts that are primarily summer seasonal in nature and may include minor ski operations (such as a simple lift or minor nordic operations), continue to apply the permit fee system specified in the existing permit.

For activities that are authorized under the National Forest Ski Area Permit Act of 1986 but include only incidental ski operations, apply the permit fee system in 6 U.S.C. 497c (FSH 2709.11, sec. 38). Encourage authorization of those activities under a more appropriate authority listed in FSM 2701, with the appropriate fee system.

4. Permit Fee System for Ski Lifts and Tows. Use the following permit fee systems for ski lifts and tows:

- a. If the use is authorized under the Term Permit Act of 1915 or the Organic Act of 1897, calculate permit fees for ski lifts and tows using a negotiated fair market value flat rate (FSH 2709.11, sec. 52) or the graduated rate fee system (FSM 2715.11).
- b. If the use is authorized under the National Forest Ski Area Permit Act of 1986, apply the permit fee system established by 16 U.S.C. 497c (FSH 2709.11, sec. 38). Encourage authorization of ski lifts and tows under a more appropriate authority listed in FSM 2701, with the appropriate fee system. Refer to FSM 2721.62 for management direction regarding ski lifts and tows.

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### **2721.61c - Winter Recreation Site Operation Plan**

Require an operation plan (FSM 2343.12) for each permit covering winter recreation activities.

### **2721.61d - Permittee Inspection**

Include in permits for winter recreation sites requirements that permittees provide for public safety as outlined in FSM 2343.1, FSM 7320, and American National Standards Institutes (ANSI) B77 Standard.

### **2721.61e - Ski Area Permit**

The National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) is the exclusive authority to authorize nordic and alpine ski areas to occupy and conduct activities on the National Forests, with two exceptions: nordic skiing that is generally of an outfitting and guiding nature (see the following para. 4) and minor ski operations that are essentially augmenting summer season operations (para. 5).

Current permit holders may choose to retain their current term and annual permits. Ski area term permits issued under the Term Permit Act of 1915 may be amended, but the term may not be extended. New graduated rate fee system clauses shall be included in any amendment. Before amending an existing term permit, give preference to issuing a new permit under the National Forest Ski Area Permit Act of 1986 to hasten the elimination of the dual permit system. Be sensitive, however, to the possible need of some holders to retain their old permits for business or financial reasons and normally accept a holder's request if the holder provides compelling justification for retaining the existing permit. At the end of current term, use the new authority and permit, even if the permit holder rejected the initial offer.

1. Only Form FS-2700-5b, Ski Area Term Special Use Permit is to be used for new or renewed authorizations for alpine ski areas and nordic ski centers.
2. Ski areas operating with United States-owned facilities, except those of a minor nature, must continue to be authorized under the Granger-Thye Act.
3. Before authorizing a term of more than 5 years for a nordic center, the authorized officer should consult with the Washington Office, Director, Recreation, Heritage, and Wilderness Resources Staff.
4. Statutory authority other than the National Forest Ski Area Permit Act and Form FS-2700-5b is to be used to authorize nordic skiing which is generally of an outfitting and guiding nature. Characteristics of such use are:
  - a. The nordic skiing is independent of an alpine ski resort;

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- b. The nordic skiing operation does not require significant capital investment on National Forest System lands; and
  - c. The skiing is not conducted from a nordic center located on National Forest System lands.
5. Activities that are essentially summer season operations, which may install a simple lift or engage in a minor nordic ski operation, shall continue to be authorized under the Term Permit Act of 1915.
6. With the exception of condominiums, normally all ski area facilities, owned or under the control of the permittee are included in the ski area permit. Condominiums, to the limited extent they exist on National Forest System lands, are to be authorized under a separate term permit authorized by the Term Permit Act.

**2721.61f - Environmental Analysis and Documentation**

Ensure that the permit issuance process for winter recreation resorts complies with requirements of the National Environmental Policy Act (NEPA) implementing regulations and related agency policy and procedures. For direction on requirements related to permit issuance for new ski areas that are not under permit, refer to FSH 1909.15, Environmental Policy and Procedures Handbook. For direction on requirements related to permit issuance for ski areas that are under permit, refer to FSH 2709.11, section 41.61b, and FSH 1909.15.

**2721.62 - Ski Lift, Tow**

This designation covers situations where lift or tow facilities constitute the most significant development on National Forest System land. Some ski slopes also may be included. This is the situation in which the base facility is located on adjacent private land, or where a community ski area does not provide any of the normal resort services, such as eating or sleeping facilities.

See FSM 2343.1 for direction relating to management of permits for ski lifts and tows.

See FSM 2721.61b, paragraph 4, for a description of which permit fee system to use for ski lifts and tows.

**2721.63 - Ski Slope, Trail**

Under this designation, ski slopes and trails constitute the significant development and use of National Forest System land. Uphill facilities shared with private land may be included when the use of National Forest System land represents only a very minor part of the total.

Normally, authorize this type of use under annual permit.

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See FSM 2343.1 for direction relating to management of permits for ski slopes and trails.

Calculate fees for ski slopes and trails based on land value or, where mixed landownership is involved, on a share of total sales (FSH 2709.11).

**2721.64 - Ski Activity**

This designation covers continuing minor ski activities, such as ski schools. Do not permit these activities as separate operations. Where there are existing permits, terminate them at the earliest opportunity and authorize future operation under a basic permit.

Temporary, short-time ski events, such as races, are designated recreation events. See FSM 2721.49 for direction on these events.

Calculate fees for ski activities under the graduated rate fee system, subject to a minimum fee of \$30 per year (FSM 2715).

**2721.65 - Snow Play**

This designation covers activities and facilities for winter recreation, not associated directly with skiing. Examples are tobogganing, sledding, and ice skating. Allow uphill devices provided they are not in place to assist skiers. Use one of the other designations under FSM 2721.6 when skiers are served.

Calculate fees for snow play under the graduated rate fee system (FSM 2715).

**2722 - AGRICULTURE**

**2722.03 - Policy**

Because agriculture uses usually serve individual, exclusive interests, as opposed to the general public, terminate existing permits when the agriculture use is incompatible with other adjacent uses on the land.

**2722.1 - Crops**

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

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There is generally no prohibition against the growing of price-supported crops on National Forest System lands. This situation varies annually and with the particular crop grown. Contact the Farm Service Agency to ensure that there are no restrictions against a particular price-supported crop.

### **2722.11 - Cultivation**

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

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

### **2722.12 - Nursery**

This designation includes the planting and growing of horticultural products; for example, trees (including Christmas trees), flowers, and shrubs. Wildlings are the property of the United States. Do not issue special use permits for the sale, culture, or cultivation of wildlings. Refer to the timber and minor forest product sales policy (FSM 2460) for the administration of wild-grown products.

### **2722.13 - Orchard**

This designation includes the use of lands for the growing of privately owned trees to produce fruit, nuts, or maple syrup. If the trees are Government-owned, apply the policy found in FSM 2467.

See FSM 2720.3 for fee policy. If policy allows the cultivation of an additional crop beneath or between the trees, the fee may include a charge for both the orchard and the cultivation uses. See FSM 2722.11 for direction on cultivation uses.

### **2722.14 - Apiary**

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

### **2722.15 - Livestock Area**

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

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### **2722.16 - Fish Hatchery**

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

### **2722.17 - Fur and Game Farm**

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

### **2722.18 - Worm Harvesting [Reserved]**

### **2722.19 - Mariculture [Reserved]**

### **2722.2 - Agricultural Improvements**

This category includes improvements used either for agricultural purposes or in association with agriculture uses. Refer to FSM 2722.3 if the use involves range management facilities. If the Federal Government owns the improvements, the Granger-Thye Act policy found in FSM 2710 also applies.

### **2722.21 - Barn, Shed**

Improvements under this designation include stables, chickenhouses, garages, storage buildings, and other utility-type buildings that do not qualify as range management facilities as described in FSM 2722.3. Forest officers also may include incidental land (such as feedlots, pastures, and watering places) and associated fencing adjacent to these structures in permits issued under this designation.

### **2722.22 - Fence**

This is a limited designation. The designation applies only to privately owned fences not used in conjunction with some other use. Some examples include a wildlife driveway or a temporary authorization for an encroachment. Authorize fences for this or similar purposes under the Federal Land Policy and Management Act of October 21, 1976. Where a fence is used in conjunction with another use, include it as part of the permit for that use.

Require private landowners to either establish or move their boundary fences to the property line to eliminate the need for a permit. See also the direction on convenience enclosures in FSM 2722.4.

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Generally, Government-owned fences assist in the administration of National Forests System lands in conjunction with grazing permits (FSM 2240). Use either a grazing permit or an interagency agreement to authorize the use of and to assign maintenance responsibilities for Government fences.

### **2722.23 - Agriculture Residence**

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

Do not issue residence permits under this designation for homes located within or adjacent to a town or established community; use the community residence designation. When issuing agriculture residence permits, follow the community residence policy found in FSM 2723.5. No authority exists for the Forest Service to issue term permits for full-time private residences. Therefore, convert any existing term permits to annual permits with the concurrence of the permit holder or when the permit expires of its own terms.

### **2722.3 - Range Facilities**

The range facilities category includes range management improvements retained in private ownership and used in conjunction with a grazing permit. Review applications for compatibility with forest plans and FSM 2240 direction. New facilities shall be Government-owned; include them as part of a grazing permit rather than under a separate special use permit. Review existing permits and incorporate as part of a grazing permit as appropriate.

### **2722.31 - Building**

This designation covers buildings such as cabins, residences, barns, and sheds. Residences in this designation differ from agriculture residences in that they are related to a grazing operation and permit. The special-use permits shall provide for termination in the event of transfer or cancellation of the grazing permit. Do not issue permits unless this is clearly the only method that benefits the administration of the range resource. See FSM 2240 for additional direction.

### **2722.32 - Corral, Pen, and Livestock Area**

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

### **2722.33 - Dipping Vat**

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

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## **2722.4 - Enclosures**

### **2722.41 - Convenience Enclosure**

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

Include in permits for such uses provisions for other National Forest System users to occupy the area in order to accomplish Forest Service objectives, such as timber sales or recreation activities.

## **2723 - COMMUNITY AND PUBLIC INFORMATION**

The community use permits provide services, notification, facilities, or housing for persons living in or adjacent to communities located in close proximity to or depending on National Forest System lands. The boundaries of such communities often are ill-defined and may occasionally involve the encroachments of residences onto National Forest System lands.

### **2723.03 - Community Use Policy**

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

Except for appurtenant entrance roads and driveways included in community-use permits, do not issue permits exclusively for road or other linear rights-of-way in this class. Refer to FSM 2730 for road right-of-way authorizations.

Public information uses are for marking and preserving points of interest to the general public and for calling attention to such places by appropriate signs, markers, and monuments. Do not use National Forest System lands for commercial advertising signs. Signs or other of these uses along public highways must comply with the guidelines of EM-7100-15, Sign and Poster Guideline for the Forest Service and with formal agreements between the Forest Service and the State or local highway departments.

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## **2723.1 - Meetings**

### **2723.11 - Group Use**

See 36 CFR 251.51 for the definition of group use. See FSM 2721 for direction on recreation events. Permit these uses unless they meet one of the criteria listed in 36 CFR 251.54 for denial of this designation of use. Do not authorize permanent structures under this designation.

### **2723.12 - Native American Traditional Religious Activity**

The American Indian Religious Freedom Act (42 U.S.C. 1996) reinforces the policy of providing access and use of National Forest System lands to American Indians for use in traditional rites and ceremonies. Use this designation unless the applicant is contemplating excavation or removal of archeological resources. In that event, see FSM 2340 and FSM 2724.4 for guidance.

### **2723.13 - Other Religious Meeting**

This designation includes tent or revival meetings, nonrecreation festivals, and other religiously sponsored gatherings that do not fit into the definition of a special event.

## **2723.2 - Religious Facilities**

### **2723.21 - Cemetery**

This is essentially a permanent use of the land. Once a commitment of the land is made, there is little or no possibility to discontinue the use since this would involve disinterment. None of the existing special use authorities provides for permanent uses of National Forest System land. For this reason, deny applications for new uses.

Existing cemeteries pose a problem since their use is technically without proper authority. Consider exchange or sale under the Townsite act (7 U.S.C. 1012a) for cemeteries where possible. Revise existing permits to include provisions for perpetual care. Do not authorize any expansion of the facilities. Apply the regular fee policy found in FSM 2715.

Consider using land exchange or sale for cemetery uses. Combine this use with related church use as appropriate. See FSM 2723.32 for direction on individual grave monuments.

### **2723.22 - Church**

Authorize new church uses only where suitable private land is not available. Consider land exchange or sale under the Townsite act (7 U.S.C. 1012a) as alternatives to a special use permit.

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Existing uses may have a strong basis in law for their establishment. They derive their authority from the Organic Administration Act of 1897 (16 U.S.C. 479). Originally permits not exceeding one acre were issued free to actual settlers of the area. The term "actual settler" means a person claiming lands under the settlement or homestead laws. The homestead laws have not applied to National Forest System lands since their repeal in 1962. Therefore, persons are no longer entitled to free use for this use designation.

If appropriate, combine this use with a cemetery use.

### **2723.3 - Public Information**

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

Include sufficient area in the permits for the construction of turnouts or stopping points as needed. Do not authorize permits for commercial advertising signs unless public demand for such use is strong.

#### **2723.31 - Marker**

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

#### **2723.32 - Monument**

This designation includes grave monuments, memorial plaques, statues, and similar items of historic or informational interest. Grave monuments covered here are to mark individual graves of historical interest and are not for use in cemeteries. See FSM 2723.21 for cemetery direction.

#### **2723.33 - Sign**

This designation covers informational signs for the convenience of the public. Examples include concession identification, approach signs, and directional information. The responsible officer may incorporate an authorization for signs into permits for related uses such as resorts, ski areas, or marinas. The responsible officer shall approve the design and wording of all signs. Refer to FSM 7160 and EM-7100-15 for information on the design, and construction of signs.

### **2723.4 - Sanitary Systems**

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### **2723.41 - Solid Waste Disposal Site**

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

The responsible officer shall work with State or local government officials to locate these sites on non-Federal land and to have the local governments assume management responsibility for these sites. The Administrator of the Environmental Protection Agency is responsible for establishing guidelines for solid waste disposal. The responsible officer shall consult FSM 2130, FSM 7460, and FSH 7409.11 for these legal requirements and additional policy and standards for the storage and disposal of solid wastes and shall incorporate the direction into the permits as appropriate.

### **2723.42 - Liquid Waste Disposal Area**

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

Issue a permit or term permit when non-Federal sites are not reasonably available. Pipelines and other directly related right-of-way uses that are part of the immediate disposal system may be included in the permit for the disposal site use. Consult FSM 7430, FSM 7440, and FSH 7409.11 for the legal requirements, policy, and standards for the storage and disposal of liquid wastes and incorporate the direction into the permits as appropriate.

### **2723.43 - Sewage Transmission Line**

This designation includes all pipelines used solely for the transmission of sewage or waste water. The authority to issue an authorization is the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771). If a treatment plant is an integral part of the system, the responsible officer shall issue the use authorization under the liquid waste disposal designation (FSM 2723.42).

### **2723.44 - Hazardous and Toxic Waste Disposal Site**

This designation includes both solid and liquid waste areas that also involve dangerous substances. Use of National Forest System lands is not appropriate. In addition, the Forest Service does not have the authority to issue special use permits for hazardous waste disposal or storage. This is the responsibility of the Environmental Protection Agency.

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**2723.45 - Transfer Station [Reserved]**

**2723.46 - Debris Disposal Area [Reserved]**

**2723.5 - Community Residences**

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

Included in this designation are isolated homes and other dwellings that serve as a primary place of residence but for which the specific designations of use in this chapter do not otherwise define.

**2723.51 - Residence, Privately-Owned Building**

Issue only permits for existing, privately-owned, owner-occupied residences. Do not authorize new uses.

**2723.52 - Residence, Government-Owned Building**

Authorize the use and occupancy of all or part of Government structures when the building would otherwise be unused; when the occupancy would afford protection to the structure; and when the Government has no further need for a building not yet scheduled for disposal. Do not authorize third party leases.

Follow the policy in FSM 6445 for Forest Service employee occupancy. Do not issue a permit for an employee residence.

**2723.53 - Residence, Alaska Term Permit Act**

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

The regional forester in Alaska issues directive supplements governing the policy under these additional authorities.

**2723.6 - Service Uses**

**2723.61 - School**

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

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

**2723.62 - Service Building**

This designation includes other community service facilities, such as police stations, jails, firehouses, dog pounds, fire towers, medical offices and centers, and others. See also the reference to the Sisk Act noted in FSM 2723.61. An interagency or collection agreement may cover the operation and staffing of Government-owned fire towers and other improvements if used in conjunction with fire management activities.

**2723.63 - Hospital or Sanitarium**

This designation includes rehabilitation and health treatment centers or camps.

**2723.64 - Shelter**

This type of use includes bus shelters, waiting sheds, fallout shelters, and others. It does not include shelters used for a variety of recreation activities. See FSM 2721 for direction on recreation shelters.

**2723.65 - Mailbox**

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

**2723.66 - Parking Lot [Reserved]**

**2723.67 - Visitor Center/Museum [Reserved]**

**2723.7 - Encroachments**

This category of uses originates through unauthorized occupancy of National Forest System lands. See FSM 5330 for policy on violations and FSM 5450 and 36 CFR 254.3 if the use involves a title claim or possible sale under the Small Tracts Act (96 Stat. 2535). Special use authorizations do not substitute for judicial resolution of the encroachment. The only valid reasons for issuing permits for encroachment are to:

1. Provide a mechanism to authorize temporary use of the land in conjunction with the legal action on the encroachment or
2. Serve as a tool in tracking or managing encroachments.

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The unauthorized use may involve improvements of substantial investment. If the authorized officer determines that the encroachment is not an appropriate use of National Forest System land, issue a nonrenewable, nontransferable permit of a duration sufficient only to allow the user to make arrangements to remove the improvements.

In the event that the use is acceptable and would have been authorized under normal circumstances, issue a permit under the normal category for that use after a legal settlement is reached (FSM 5330).

**2723.71 - Cabin (Invalid Mining Claim)**

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

**2723.72 - Residence**

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

**2723.73 - Other Improvement**

These improvements include a variety of uses ranging from home water supply pipelines and wells, to sheds, barns, and garages. Many of these may be inadvertent encroachments. In most situations, the legal settlement of the case provides for relocation of the use onto private land. The legal action may require the authorized officer to issue a permit for the temporary occupancy of the improvement until the owner can amortize the investment in the structure.

**2723.74 - Cabin Predating Alaska National Interest Lands Conservation Act of 1980 (ANILCA) [Reserved]**

**2724 - FEASIBILITY, RESEARCH, TRAINING, CULTURAL RESOURCES, AND HISTORICAL**

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### **2724.1 - Feasibility**

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

Because of the different objectives involved, issue permits under this category rather than under the intended use. This avoids the need for superfluous permit conditions that apply only to the proposed use and not to the feasibility determination itself.

#### **2724.11 - Site Survey and Testing**

This type of feasibility designation includes operations to determine if a particular location is suitable for a proposed use. It may consist of surveying to verify elevations and boundaries or geological testing to check the subsurface area for strength in supporting foundations. A typical project may have, over a number of years, several feasibility tests that may lead up to a final permit for the construction and use of improvements on the land. Examples include dam and reservoir projects, major powerline facilities, and electronic sites.

#### **2724.12 - Resource Survey**

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

#### **2724.13 - Hydroelectric Investigation [Reserved]**

### **2724.2 - Research**

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

### **2724.21 - Experimental and Demonstration**

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

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### **2724.22 - Research Study**

These are nonspecific studies for a wide range of academic interests. Issue permits under this designation for uses inappropriate to other categories of this section.

### **2724.23 - Weather Station**

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

### **2724.24 - Weather Modification Device**

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

### **2724.25 - Observatory**

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

### **2724.3 - Training**

#### **2724.31 - Military Training Area**

This designation is limited to Federal and State military training activities and sites. Private organizations or individuals shall not use National Forest System lands for military or paramilitary exercises. This type of use is often potentially damaging to National Forest System resources and may endanger other Forest users. See FSM 1530 for a list of agreements with defense agencies. Refer to these agreements for the coordination necessary with this type of use.

Adventure games (sometimes called war or survival games) may be permitted and should be classified as a recreation activity and authorized as a recreation event (FSM 2721.49).

#### **2724.32 - Education Center**

This designation covers educational facilities that are not physically part of a community school system. Refer to FSM 2723.6 for school permits. These institutions often need to carry out portions of their educational programs in a forested or wildland environment. Examples include

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centers that teach conservation subjects to students and training areas for foresters, engineers, geologists, and botanists. This designation does not include facilities primarily used for recreation activities and programs. See FSM 2721 for recreation uses. Issue permits for educational uses under this designation when suitable private land is unavailable.

#### **2724.4 - Cultural Resource and Treasure Trove Uses**

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

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

Allow qualified institutions and individuals to observe, excavate, or remove archaeological resources on National Forest System lands when in the public interest and within the constraints of the various laws and regulations governing the management of archaeological and other natural resources.

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

Follow the basic policy for cultural resource activity on National Forest System land in FSM 2360 and additional coordinating requirements for historic preservation in 36 CFR 800. Issue permits for all cultural resource activities except for those conducted under contract to the Forest Service or conducted by or under the direct supervision of Forest Service staff archeologists.

Review the need for requiring a cultural resource permit for activities that only incidentally result in the disturbance of archeological resources. Other exceptions to the requirement for a cultural resource permit are listed in 36 CFR 296.5.

The definitions of words and phrases used in this section are found in 36 CFR 296.3. Terminology related to cultural resources is also in FSM 2360. The following additional definitions relate specifically to permit policy:

1. Academic Activity. Cultural resource activity that is research-oriented and usually performed through an institution of higher learning.

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2. Blanket Permits. Permits that authorize qualified applicants to conduct examinations of cultural resources on broad geographic areas, such as a National Forest or State. Such permits are an administrative convenience and may serve as a form of certification of the applicant's qualification.
3. Consulting Activity. Activity that is project-oriented, but not necessarily site-specific. Often, projects are related to non-Forest Service proposals for use of National Forest System lands.
4. Disturbing Examination. An activity that may alter or deplete the cultural resource under study. Individuals collect and remove archaeological or historical specimens. The ground may be disturbed.
5. Limited Testing. A preliminary survey or discovery technique, causing minimal ground disturbance, to determine the existence or significance of sites. Limited testing, as defined by the regional archeologist, may consist of shovel tests to determine if stratigraphy is present, minimal subsurface probe or auger sampling, or removal of vegetative cover and organic matter on a small area. For the purposes of the permitting process, consider limited testing as nondisturbing.
6. Nondisturbing Examination. Data collection activities that do not alter or deplete the cultural resource under study. There is no collection of archeological or historical specimens and little or no ground disturbance. These activities include architectural drawing or photography, applying remote sensing techniques to surface or subsurface examinations, locating, describing, and documenting cultural resources during field inventory, and limited testing.
7. Qualified Applicant. Any individual or organization, which meets the requirements for application as found at 36 CFR 296.6.
8. Treasure Trove. A valuable quantity of money, unmounted gems, or precious worked metal in the form of coins, plate, or bullion of unknown ownership, purposely hidden, that does not fall under any of the definitions in 36 CFR 296.3.

### **2724.41 - 1906 Act Permit**

Regulations governing the administration of these permits are found at 43 CFR 3 and at 36 CFR 296. Do not issue new permits under this authority for activities concerning cultural resources that are 100 years old or greater. Reissue expired or terminated permits only under the authority of the Act of 1979 if the resource involved is 100 years old or greater. The responsible officer may amend or extend existing permits under the original permit authority. Refer to FSM 2724.5 for direction on resources less than 100 years of age.

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### **2724.42 - Nondisturbing Use**

Prior to issuing permits, the authorized officer shall consult with and obtain documented recommendations from a Forest Service cultural resource specialist with qualifications equivalent to the training and experience required of an applicant as specified in 36 CFR 296.8(a)(1). Issue permits under the authority of the Act of 1897 to qualified applicants. These permits shall authorize either consulting or academic activity, but not both, as part of the same permit. Non-site-specific or blanket activity for an entire National Forest or region is appropriate under this category for certifying an individual or institution for future operations over a large area. Regional foresters shall determine the extent to which the limited testing is used in particular geographic areas.

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

### **2724.43 - Disturbing Use**

Issue permits for land-disturbing cultural resource activities under the authority of the Act of 1979 if the cultural resources are 100 years or older. Regulations at 36 CFR 296 provide detailed information on permit application, issuance, and administration. These include but are not limited to instructions on Indian tribal notification, qualifications of applicants, reclamation, handling of artifacts, safeguarding of archaeological sites and resources, and penalties.

### **2724.44 - Treasure Hunting**

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

1. Lost or abandoned property that falls under the General Services Administration authority in 40 U.S.C. 310.
2. Archaeological resources or specimens defined at 36 CFR 296.
3. Locatable minerals, as defined by the 1872 Mining Act (30 U.S.C. 21-54), or leasable minerals under either the Act of 1920 (30 U.S.C. 181) or the Act of 1947 (30 U.S.C. 351-359).
4. Recent vintage coins or other small objects of recent age often found with the aid of a metal detector. No significant excavation is involved. The search is a recreation pursuit confined to areas with no historic or prehistoric value.

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### **2724.44a - Ownership of Treasure Trove**

The permit does not establish any ownership of a trove; it only authorizes the search activity. In the event the permit holder makes a discovery, the ownership is adjudicated by process of law on a case-by-case basis. Several factors influence the ownership determination. These may include the following:

1. Archaeological resources remain the property of the United States.
2. The true owner of the trove may come forward.
3. The Forest Service cannot determine the tax aspects or interests of other Governmental agencies nor is it possible to determine these aspects in advance.
4. Resolution may include negotiation between the finder and the United States (as landowner) for any nonarchaeological portion of the trove.

Permits shall provide only for search and, if there is a discovery, for removal to a repository for safekeeping until determination of ownership. The recovered treasure shall remain in escrow for one year to allow all claimants to come forward and to arrive at legally acceptable settlements.

### **2724.44b - Relation to Mining Claims**

Treasure trove search under the guise of prospecting or mining is trespass (FSM 5330). A trove found on an unpatented mining claim, even if the claim is prospectively valuable for minerals under the 1872 Mining Act (30 U.S.C. 21-54), does not automatically become the property of the mineral claimant. The United States owns the land, and determination of the treasure ownership is as set out in FSM 2724.44a.

### **2724.5 - Historic [Reserved]**

#### **2724.51 - Historic Building and Improvement [Reserved]**

#### **2724.52 - Historic Site [Reserved]**

### **2725 - INDUSTRY**

This class includes compatible uses of the National Forest System lands for a variety of generally forest-related industrial activities. Authorize permits for these uses only when suitable private land is not readily available.

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## **2725.1 - Camps**

### **2725.11 - Construction Camp and Residence**

This designation includes camps, cabins, or residences to house personnel employed in road construction, logging, and other industries. The designation also includes prison camps. These uses range from seasonal or temporary to permanent; the occupation may be full or part time.

Include this type of use with that for the parent industrial use whenever possible. Do not authorize any facilities for summer homes, hunting lodges, or clubhouses for employees.

### **2725.2 - Storage**

This category covers the storage of timber and timber products, fuel, sand and gravel, ore, construction supplies, materials, equipment, highway department sheds and storage, and other items that are not an integral part of a use under another category. This category does not include unrefined oil and gas storage. See FSM 2726.33 for direction on this use.

Waive fees under 36 CFR 251.57 if the storage is connected with a Government contract that includes the use of National Forest System lands as an item in the bid or if it involves highway maintenance.

### **2725.21 - Warehouse and Storage Yard**

This designation includes storage areas with some improvements constructed on them. The stored items usually consist of equipment and material goods.

### **2725.22 - Stockpile Site**

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

## **2725.3 - Manufacturing**

### **2725.31 - Processing Plant**

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

### **2725.32 - Truck and Equipment Depot**

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

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### **2725.33 - Batch and Mixing Plant**

This designation includes facilities for preparation of road construction materials and usually they are project-related. Most are of a short-term nature.

### **2725.4 - Measurement**

#### **2725.41 - Weighing or Scaling Station**

This designation includes sites used for the weighing of gravel, stone, timber products, and others. Also included are facilities used for the scaling of timber and timber products. The use may be temporary or permanent. Portable scaling platforms owned by the Forest Service and used by private scaling organizations also require a permit under this designation.

### **2725.5 - Arts**

#### **2725.51 - Still Photography**

This designation includes commercial activities for capturing still images on film or in a digital format. This designation does not include the taking of photographic images by the general public for personal use or commercial filming activities (FSM 2725.52).

Direction on fee administration is found at FSH 2709.11, chapter 30, and direction on permit administration is found at FSH 2709.11, chapter 40.

#### **2725.52 - Commercial Filming**

This designation does not include still photography (FSM 2725.51).

This designation includes locations used by the motion picture and television media involving large film crews, actors, and sets. The designation also includes anticipated news-related uses, such as coverage of sports events, entertainment specials, or documentaries. Coordinate the permitting of these uses with the Washington Office, Office of Communication. See FSM 1650 for further direction.

Direction on fee administration is found at FSH 2709.11, chapter 30, and direction on permit administration is found in FSH 2709.11, chapter 40.

### **2725.6 - Mineral Exploration**

For direction on mineral exploration, see FSH 2709.11, section 45.6.

#### **2725.61 - Geological and Geophysical Exploration**

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For direction on geological and geophysical exploration, see FSH 2709.11, section 45.61.

**2725.62 - Mineral Material Sale [Reserved]**

**2725.7 - Mineral Development [Reserved]**

**2725.71 - Occupancy Permit - Reserved Mineral Right [Reserved]**

**2725.72 - Occupancy Permit - Outstanding Mineral Right [Reserved]**

**2725.9 - Timber**

This category covers temporary access across National Forest System lands to enable timber operators to log private land parcels. Consider possibilities for reciprocal use when issuing a permit.

**2725.91 - Tailhold**

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

**2725.92 - Spar**

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

**2725.93 - Log Landing**

This designation provides for locations for the temporary storage of recently cut timber at the area of timber harvest. Do not use this designation as a replacement for storage facilities found in FSM 2725.2. Log landings are integral requirements of timber harvest operations.

**2725.94 - Yarding Corridor**

This designation identifies those uses involved in timber harvesting that provide for moving logs from the cutting areas to log landing areas. They may consist of cableways or skid roads, depending on the type of operation.

**2725.95 - Flume, Log Chute**

Use this designation for devices used to move logs from harvest areas to landing or staging areas by means of water flow or gravity. This is not a transportation use in that it is primarily related to the harvest operation. Use of water as a carrying medium is incidental to the project.

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**2726 - ENERGY GENERATION AND TRANSMISSION**

**2726.1 - Powerplants Under the Authority of the Federal Energy Regulatory Commission**

**2726.11 - Hydroelectric Project, Federal Energy Regulatory Commission Licensed**

This designation includes power uses authorized by a Federal Energy Regulatory Commission (FERC) license. See FSM 2770 for direction on FERC-related projects.

**2726.12 - Hydroelectric Project, Federal Energy Regulatory Commission Exempted**

This designation includes power uses that the FERC has exempted from licensing. See FSM 2770 for direction.

**2726.2 - Other Powerplants**

**2726.21 - Wind Power Facility**

This designation includes only electric power production facilities generated by the wind. Issue permits for other wind-driven facilities, such as pumps or mills, under the appropriate designations for agriculture or community uses.

**2726.22 - Fossil Fuel Powerplant**

This designation includes coal-fired, oil and gas-fueled electric generating stations. These types of power producing facilities generally are not compatible with National Forest System lands. Issue permits under this designation only if private land is not available and providing that it is possible to minimize adverse impacts.

**2726.3 - Oil and Gas Development**

**2726.31 - Oil and Gas Pipeline**

See FSM 2726.34 for additional direction concerning interstate natural gas pipelines under the jurisdiction of the Federal Energy Regulatory Commission.

1. The authority for grants to non-Federal entities for oil and gas pipeline rights-of-way is section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185). If a Federal agency applies for this type of use, the proper authority for issuance is the Federal Land Policy and Management Act. The designation includes only pipelines and directly related facilities for the transportation of oil, natural gas, synthetic liquid or gaseous fuel, and any refined product produced there from. See FSM 2729.11 for direction related to water transmission systems.

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2. New pipelines over 24 inches in diameter are subject to congressional oversight by the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources (30 U.S.C. 185(w)(2)).
  - a. Provide copies of applications for new 24-inch diameter or larger pipelines to the Washington Office, Lands staff for the Chief's review and forwarding to the committees.
  - b. Provide copies of proposed right-of-way authorizations for new 24-inch diameter or larger pipelines to the Washington Office, Lands staff for review and forwarding to the committees for their 60-day review.
  - c. Do not seek oversight for applications for renewal or amendment or for replacement of 24-inch diameter and larger pipelines unless the application involves significant modifications. A significant modification is any action that would result in a greater allocation of land or pipeline capacity beyond that already obligated by the existing pipeline.
3. Holders of valid Bureau of Land Management (BLM) oil and gas leases and designated operators of BLM unitized lease areas do not require a special use authorization for pipelines or directly related facilities associated with the lease and located within the boundaries of the lease or unit area, as long as the pipelines or facilities are used solely for the production or gathering of oil and gas. If the pipelines and related facilities are used for the transportation of oil and gas, whether on-lease or off-lease, the pipeline right-of-way must be issued under the authority of the Mineral Leasing Act.

The Mineral Leasing Act also provides for the issuance of supplemental temporary permits to use such lands in the vicinity of a pipeline and for such purposes deemed necessary for construction, operation, maintenance, or termination of the pipeline; for protection of the natural environment; or for public safety. These uses are in addition to the related facilities previously described in this section.

Whenever possible, use other established authorities for permits and related Forest Service Manual instructions for the particular use when the proposed use does not relate directly to the pipeline. When using the Mineral Leasing Act authority, enforce all additional requirements of that act.

### **2726.31a - Bureau of Land Management Coordination**

An exception to Forest Service issuance of grants exists if the non-Federal pipeline crosses additional Federal lands under the jurisdiction of at least one other agency. In this instance, the Secretary of the Interior, Bureau of Land Management, grants the necessary authorization after concurrence of the Forest Service.

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The Forest Service may require that the grant include those terms, conditions, or stipulations necessary to ensure that the grant will not be inconsistent with National Forest System purposes. It also may recommend inclusion of other appropriate terms, conditions, or stipulations. Pursuant to 43 CFR 2882.3(i), the Forest Service also may refuse to grant authorizations or to give the Secretary of the Interior its concurrence if the grant will be inconsistent with National Forest System purposes. If necessary, disputes between the two agencies shall be resolved through appropriate channels.

The Forest Service and the Bureau of Land Management may enter into an interagency agreement to provide additional mutual assignments of responsibilities, review, and decision-making. The Mineral Leasing Act at 30 U.S.C. 185(c)(2) allows for these agreements.

**2726.31b - Applications**

See 36 CFR 251.54 for a list of the general and special qualification requirements of applicants for pipelines. If the applicant is a member of a partnership, the information required of the business entities listed in this regulation also shall apply to that partnership. In addition, applicants shall submit and disclose all other information as stated within the amended Mineral Leasing Act.

The Mineral Leasing Act provides that the ratification or confirmation of any existing pipeline or related facility granted before November 16, 1973, shall not qualify as a major Federal action requiring an environmental impact statement.

Do not ratify or confirm any right-of-way or permit for an oil or gas pipeline or related facility granted under any provision of law before November 16, 1973, unless the parties mutually modify it to comply to the extent practicable with the terms and conditions described in this section.

**2726.31c - Width of Pipeline Rights-of-Way**

Pipeline rights-of-way shall be only wide enough for efficient operation and maintenance of the pipeline after construction. They shall not exceed 50 feet plus the ground occupied by the pipeline or its related facilities, unless the issuing officer records the reasons why a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Approve temporary additional widths as necessary during the construction phase of the pipeline.

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### **2726.31d - Cost Reimbursement and Rental Fee**

Section 28 of the Mineral Leasing Act (30 U.S.C. 185(1)) provides that an applicant for an oil or gas pipeline authorization shall reimburse the United States for the administrative and other costs incurred in the processing of such an application. The act further provides that the holder of an authorization for an oil or gas pipeline shall reimburse the United States for costs incurred in monitoring the construction, operation, maintenance, and termination of the authorized pipeline and related facilities.

The Omnibus Appropriations Act of 1999 (Public Law (Pub. L.) 105-277) authorizes the Forest Service to use any money collected pursuant to section 28 of the Mineral Leasing Act, in advance or otherwise, to reimburse the applicable appropriation to which such costs were originally charged (FSM 6512.12a, para. 10).

Base the amount of funds to be collected in advance on an annual plan of operations. Issue billings at least quarterly. Unused advance payments are refundable or, at the consent of the holder, they may be applied to the next periodic advance payment or to the annual rental fee. Base the amount of reimbursements on actual expenditures to date.

The holder is required to pay in advance the market rental value fee for the rights and privileges granted pursuant to each authorization.

### **2726.31e - Suspension or Termination**

Suspension or termination of pipeline authorizations under the Mineral Leasing Act requires an administrative proceeding pursuant to 5 U.S.C. 554 and 7 CFR part 1, subpart H.

### **2726.31f - Common Carrier Provisions**

Pipelines and related facilities authorized by the terms of the Mineral Leasing Act are subject to its common carrier provisions and, if domestically produced crude oil is transported, except as otherwise noted, to the export limitations of the Export Administration Act of 1979 (Act of September 29, 1979; Pub. L. 96-72; 93 Stat. 503; 50 U.S.C. Appendix 2401). The common carrier provisions of the Mineral Leasing Act (30 U.S.C. 185(r)(3)(A)) do not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. 717(w)) or operated by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas (FSM 2726.34).

### **2726.32 - Oil and Gas Pipeline Related Facility**

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Related facilities may include valves, pumping stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips, and campsites. Related facilities need not connect with or be adjacent to the pipeline and may be the subject of separate authorizations.

**2726.33 - Oil and Gas Production and Storage Area**

Authorize oil and gas storage facilities not related to a pipeline under either the Organic Act of 1897 (16 U.S.C. 551) or the Term Permit Act of March 4, 1915 (16 U.S.C. 497). If the storage use involves a Government-owned structure, the Granger-Thye Act of April 24, 1950 (16 U.S.C. 580d) also applies.

Oil and gas storage tank batteries in this designation usually relate to the operation of production wells. When these are located on National Forest System land leased to the applicant by the Bureau of Land Management, a special use authorization is not necessary.

**2726.34 - Natural Gas Pipeline - Federal Energy Regulatory Commission**

1. The Natural Gas Act of June 21, 1938 (15 U.S.C. 717) calls for the Federal Energy Regulatory Commission (FERC) to regulate interstate natural gas pipelines and ensure that the price of gas carried in these pipelines is just and reasonable.
  - a. A natural gas transporter (applicant) must obtain from FERC a certificate of public convenience and necessity (15 U.S.C. 717f(c)) to be authorized to build or extend an interstate natural gas pipeline. Such a certificate gives the certificate-holder the power of eminent domain (15 U.S.C. 717f(h)) to obtain the right-of-way over non-Federal lands.
  - b. In addition to such a certificate, if the natural gas pipeline is to cross National Forest System lands, the natural gas company also must obtain a right-of-way authorization from the Forest Service or Bureau of Land Management (BLM) if another Federal agency's land is involved (FSM 2726.31a). Such authorizations are issued under the authority of the Mineral Leasing Act of 1920 (FSM 2726.31).

Before issuing a natural gas pipeline right-of-way authorization, ensure that the applicant has obtained a certificate of public convenience and necessity from FERC if the pipeline is under the jurisdiction of FERC in accordance with the Natural Gas Act. If there is any question as to FERC's jurisdiction over a natural gas pipeline, suggest that the applicant petition FERC for a jurisdictional ruling (18 CFR 385.207).

2. If FERC is involved in a natural gas pipeline, FERC usually assumes the lead Federal agency role in preparing the appropriate Federal environmental document, because FERC has the responsibility to determine if the pipeline is in the public interest and because FERC's authorization gives the natural gas company certain rights on non-Federal lands.

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- a. Request cooperating agency status in FERC's process.
  - b. Cooperate with FERC early in the process in the planning, environmental analysis, and documentation for the proposal.
  - c. Ensure the process and documentation are adequate (FSM 1950 and FSH 1909.15) for Forest Service use in issuing a decision.
  - d. Actively coordinate the environmental analysis and decision with FERC with the goal of having the Forest Service right-of-way decision consistent with the FERC decision.
3. For natural gas pipelines under the jurisdiction of FERC the following applies:
- a. The oil and gas pipeline procedures of FSM 2726.31 apply to natural gas pipelines. Inasmuch as the Congressional oversight process (30 U.S.C. 185(w)(2)) applies to the right-of-way authorization issued under the Mineral Leasing Act, the Forest Service or BLM, as appropriate, not FERC, ensures such oversight contacts.
  - b. The coordination with BLM is the same as set out in FSM 2726.31a.
  - c. The applicable direction concerning pipeline authorizations is in FSM 2726.31b through 2726.31e, 2726.32, and 2726.33.
  - d. As noted in FSM 2726.31f, a pipeline under the jurisdiction of FERC is already regulated as a common carrier, so the common carrier provisions of the Mineral Leasing Act do not apply (30 U.S.C. 185(r)(3)(A)).

### **2726.34a - Interagency Agreement for Processing Interstate Natural Gas Pipeline Proposals**

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

1. Objective. The objective of the Agreement is to encourage concurrent reviews, minimize duplicative processes, and shorten the cumulative processing time in evaluating applications and making decisions for interstate natural gas pipeline projects.

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2. Federal Energy Regulatory Commission Filing Procedures. The FERC has prepared a reference paper (ex. 01) describing the FERC's "Traditional Filing Process" and the "NEPA Pre-Filing Process" as procedures to follow when responding to proposals for interstate natural gas pipeline projects. Proponents may use either of these two procedures for a project. However, the FERC is encouraging proponents to use the NEPA Pre-Filing Process which they must request and have approved in advance by the FERC. The appropriate Forest Service officer should, during early discussions about a proposed project, ask the proponent which of these two processes they intend to pursue when they file their application with the FERC. This information is useful to the Forest Service in determining when in the process the agency will become involved and for allocating time and resources needed to fulfill the Forest Service's role as a cooperating agency, as defined in the Council on Environmental Quality's regulations implementing the National Environmental Policy Act of 1968 (NEPA) (42 U.S.C. 4321 et. seq.).

Additional information about the FERC's Pre-Filing Process is found at the FERC's World Wide Web/Internet site at <http://www.ferc.gov/help/processes/flow/lng-1-text.asp>.

3. Proponent Contacts. A proponent for an interstate natural gas pipeline project may make contact with landowners, Forest Service officers, and other Federal, State, and local governmental officials about a proposed project before FERC's staff involvement or knowledge of the proposal. To effect the processing efficiencies of the Agreement, Forest Service officers shall work closely with a proponent during these initial inquiries and be responsive to requests for available information that might benefit the proponent in shaping their proposal. The information produced may include landownership and status maps, Forest land and resource management plan information (maps, prescriptions, standards, and so forth), existing and designated utility corridors, special management area designations or prescriptions, public uses, and other existing special uses that might be affected by the project. As provided for in paragraph 2, the Forest Service officer should ask the proponent which of the two filing procedures the proponent intends to use in filing their application with the FERC.

4. Federal Energy Regulatory Commission as Lead Agency. The FERC shall be the lead Federal agency responsible for complying with the provisions of NEPA and other applicable laws and regulations for most projects subject to the provisions of the Agreement. When a proponent chooses the FERC's Traditional Filing Process, the FERC assigns an environmental project manager after the proponent files their application. When a proponent chooses the NEPA Pre-Filing Process, the FERC assigns an environmental project manager before the application is filed.

Under both the Traditional Filing and the NEPA Pre-Filing processes, the FERC is responsible for:

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- a. Coordinating cooperating agencies' efforts during consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for compliance with the Endangered Species Act of 1973 (16 U.S.C. 1531-1536, 1538-1540) and the Magnuson-Stevens Fishery Conservation and Management Act of 1996.
  - b. Coordinating cooperating agencies' efforts during actions to ensure project compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470 et. seq.), including consultation with the appropriate State Historic Preservation Officer, Tribal Historic Preservation Officer if applicable, Indian Tribes, and so forth.
  - c. Identifying the environmental project manager assigned to the case who will act as the FERC's primary contact.
  - d. Identifying which of the FERC's filing procedures are being followed for the project.
  - e. Requesting the appropriate Federal agency(ies) to participate in processing the case as a cooperating agency(ies).
  - f. Scheduling a coordination meeting during which the FERC, in consultation with the cooperating agency(ies), shall develop and commit to a schedule for processing the case.
5. **Jurisdiction and Issuance of Authorizations.** As the location and specifications of a proposed project become more certain, the Forest Service officer shall identify and inform the proponent and the FERC as to which Federal land management agency has the responsibility to issue the right-of-way grant to use and occupy affected NFS lands, and the name of the authorized officer who has the authority to issue the grant. This notification is required under both of the FERC's filing procedures.
- a. **Proposals Involving Lands Managed by More Than One Federal Agency.** The Department of the Interior is responsible for issuing the right-of-way grant for projects that occupy Federal lands administered by more than one Federal agency. In most cases, this authority has been delegated to the Bureau of Land Management (BLM).

When the Department of the Interior or the BLM is the entity responsible for issuing the right-of-way grant, the Forest Service shall identify the Forest Service officer from the lead Forest Service unit who is responsible during the early coordination stage to work with the appropriate Department of the Interior or BLM office, to review the project and to designate a project manager.

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b. Proposals Involving National Forest System Lands as the Only Federal Land. The Forest Service is responsible for issuing the right-of-way authorization when the only Federal land that will be occupied is NFS land. In this situation, the Forest Service shall identify to the proponent the Forest Service authorized officer with the delegated authority to issue the authorization for the proposed project. For projects that cross more than one National Forest in the same Region, the authorized officer shall be either the regional forester, or delegated to the forest supervisor of a designated lead Forest. For inter-Regional projects, the authorized officer shall be either the regional forester of the designated lead region, or delegated to a forest supervisor agreed upon among the regional foresters consistent with the direction in FSM 2704.32.

It is the responsibility of the authorized officer to request the proponent to submit their proposal in writing and to work with the proponent to ensure that the proposal is developed so that it may be accepted as an application.

6. Forest Service Role as a Cooperating Agency. When contacted by the FERC that a proposed project will use and occupy NFS land, the Forest Service officer acting either as a deciding officer (para. 5b) or as the line officer representing the lead Forest Service unit (para. 5a) shall respond in a letter to the FERC that the Forest Service shall:

- a. Coordinate and cooperate with the FERC and other cooperating Federal agencies involved in the project.
- b. Assist in the development of a single environmental analysis adequate in scope to address issues and concerns associated with NFS lands and resources.
- c. Assist in the development of a detailed schedule that provides sufficient time to:
  - (1) Collect information and complete initial surveys and studies.
  - (2) Solicit and evaluate internal and external comments.
  - (3) Conduct an environmental analysis of the impacts associated with the construction, operation, maintenance, and termination of all proposed right-of-way facilities, including the location of temporary use areas and ancillary facilities.
  - (4) Review and write reports.
  - (5) Amend or revise a forest land and resource management plan if necessary to accommodate the proposed project.
  - (6) Respond to and process administrative appeals of a Forest Service decision (if applicable).

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- (7) Prepare authorizations, certificates, plans of development, and so forth.
- d. Provide the name, title, address, and telephone number of the authorized officer who is the deciding officer (para. 5b) or the line officer of the lead Forest Service unit (para. 5b) and the project manager or primary point of contact for processing the proposal or application.
- e. State the Forest Service's intent to recover from the proponent the agency's costs to process the proposal through either a Cost Recovery Agreement (CRA) between the Forest Service and the proponent or as part of a CRA between the BLM and the proponent.
- f. Identify readily available land and resource information relative to the proposed project, if not previously provided, including, but not limited to:
- (1) The current Forest land and resource management plan's management direction that may affect the proposed project including land use allocations, corridor designations in proximity to the proposed route, and standards and guides or management prescriptions, and other existing studies, data, and information concerning the lands and resources along the proposed route.
  - (2) The disclosure of existing uses that could be impacted by the proposed project such as the owners and authorization holders of facilities along the proposed routes.
  - (3) The disclosure of known or anticipated concerns of the agency, landowners, the public, and so forth regarding the proposed project and ways to mitigate those concerns.

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**2726.34a - Exhibit 01**

**PROCESS FOR THE ENVIRONMENTAL  
AND HISTORIC PRESERVATION REVIEW OF  
PROPOSED INTERSTATE NATURAL GAS FACILITIES**

**Federal Energy Regulatory Commission  
Office of Energy Projects  
Division of Gas – Environment and Engineering**

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

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

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

The FERC is responsible for authorizing the siting, construction, and operation of interstate natural gas pipelines, natural gas storage fields, and the liquefied natural gas (LNG) facilities pursuant to sections 3 and 7 of the Natural Gas Act of 1938 (NGA), as amended. Virtually all applications to the FERC for interstate natural gas projects require some level of coordination with one or more federal agencies to satisfy the FERC’s requirements for environmental review under the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, and the Magnuson-Stevens Act.

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The May 2002 Interagency Agreement (IA) applies to those projects where the FERC would normally prepare an environmental assessment (EA) or an environmental impact statement (EIS) pursuant to its siting authority under the NGA. The IA provides a framework designed to expedite and streamline environmental and historic preservation reviews that must be conducted in conjunction with the processing of proposals and applications for these projects. Smaller projects can be constructed under blanket-type or automatic authority, or may qualify as categorical exclusions which do not require the FERC to prepare an EA or an EIS.<sup>1</sup>

**PROPOSALS AND APPLICATIONS FOR NEW FACILITIES**

Project proponents seeking authorizations from the FERC under sections 3 or 7 of the NGA have a choice, subject to the FERC's approval, of one of two procedures:

- A. The "Traditional Filing Process"; or
- B. The recently-adopted "NEPA Pre-Filing Process"

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

**A. The Traditional Filing Process**

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

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

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Regardless of whether or not the project proponent contacts the FERC prior to filing its application, under the Traditional Filing Process, the FERC establishes contact with other participating agencies after the application is filed. This first contact generally occurs in conjunction with the FERC's issuance of a Notice of Intent (NOI) to Prepare an EA or EIS, and may be oral or written. The NOI constitutes the beginning of the environmental review process; it contains a brief description of the proposal; a request for participating agencies to identify ("scope") issues and comment on the proposal; a request for cooperating agencies; and contact information with details regarding phone numbers, mail and website addresses. The scoping process is conducted to identify issues, and to identify means of resolving conflicts, and avoiding or mitigating adverse effects. As discussed in the IA, this early point in the process is where the signatory agencies begin to work collaboratively to complete the required review process as expeditiously as feasible.

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

**B. The NEPA Pre-Filing Process**

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

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

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

If the FERC approves a project proponent's request to use the NEPA Pre-Filing Process, the project is assigned a Docket Number with a "PF" prefix (e.g., PF01-01) which serves as the identifier for placing all relevant correspondence in the FERC's public record for that project. The FERC then notifies the participating agencies by telephone or in writing that the project proponent's NEPA Pre-Filing request has been approved. The FERC will also discuss the agencies' participation in a planning or informational meeting with the project proponent to discuss land and resource issues and concerns. The FERC and the participating agencies may consult regarding the agencies' ability to commit to a pre-filing time frame and a schedule established by the FERC. Most of the activities described in the IA regarding the NEPA Pre-Filing Process take place much sooner than they would otherwise be conducted in the Traditional Filing Process.

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

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

- Identifying each agency's role and responsibilities;
- Identifying significant issues, or other administrative or land use/land designation barriers;
- Providing available data and recommendations; and
- Assisting in the drafting of NEPA documents, and related activities.

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**TIMELINE COMPARISON**

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

**Months 0 - 5:**

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

The FERC staff has only very limited knowledge of the project at this stage, based on articles in the trade press, or through informal meetings with the project proponent. At this point, the FERC would not assign any resources to review or evaluate the project proponent's proposal.

As the project proponent develops a study of potential rights-of-way, the participating agencies, landowners, and the general public may be contacted by the project proponent to inform all interested parties of its plans. A project proponent may contact a participating agency with requests for information, such as land ownership patterns, land status, and other available resource data or studies, including requests for copies of documents such as land management plans, existing studies, corridor designations, etc.

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

**Months 5 - 12:**

During this stage, in the Traditional Filing Process, a project proponent is continuing to develop its project plans, and is beginning to identify a preferred route (and alternatives). As required surveys are started, federal, State and local land management agencies, and landowners are contacted. The FERC staff becomes much more aware of the project at this point, but there is no requirement that the project proponent notify the FERC prior to filing an application. The FERC typically does not devote significant resources to the project during this time. Likewise, other participating agencies with permitting authority would not be expected to devote significant time or resources toward evaluating or addressing a proposal during this phase.

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With the NEPA Pre-Filing Process, the FERC staff would begin to devote significant resources to addressing the proposal and working with the project proponent as much as 8 months prior to the filing of an application at the FERC. The FERC staff will make contact with the project proponent and the participating agencies at the earliest possible point to initiate scoping activities and begin the environmental analysis.

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

**Months 12 - 20:**

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

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

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

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## **2726.4 - Electric Transmission and Distribution**

### **2726.41 - Powerline, Rural Electrification Administration Financed**

Refer to FSH 2709.11, chapter 30 for direction on fee administration. See FSH 2709.11, chapter 40 for direction on permit administration.

### **2726.42 - Other Utility Improvement, Rural Electrification Administration Financed**

Refer to FSH 2709.11, chapter 30 for direction on fee administration. See FSH 2709.11, chapter 40 for direction on permit administration.

### **2726.43 - Powerline [Reserved]**

### **2726.44 - Other Utility Improvement [Reserved]**

## **2727 - TRANSPORTATION**

### **2727.1 - Aircraft Facility**

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

### **2727.11 - Airport, Heliport**

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

This type of use generally excludes other uses of the land. Do not issue an authorization if non-Federal land is available.

### **2727.12 - Hangar and Service Facility**

This designation includes structures related to aircraft use where the airport itself is not located on National Forest System land.

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### **2727.13 - Airport Concession**

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

### **2727.14 - Airport or Airway Beacon**

This designation includes airport approach lighting systems or rotating beacons where the airport itself is not located on National Forest System land. It also includes the few instances where a navigation route marker consists of a visual, nonelectronic device.

### **2727.15 - Helicopter Landing Site**

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

### **2727.2 - Marine**

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

### **2727.21 - Mooring Point**

This designation includes minor uses along waterways for securing boats or other water craft to the land. Generally, there are no improvements at such sites.

### **2727.22 - Boat Dock, Wharf, Pier**

This designation includes improvements along rivers or shores used for securing water craft. These may range from minor pilings for log raft operations to larger pier facilities for servicing and storing boats or ships. Verify the ownership of the water area. Include only those facilities actually located on National Forest System land or water areas.

### **2727.23 - Canal**

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

### **2727.24 - Navigation Aid, Lighthouse**

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Structures under this designation include the lighthouse building itself and directly related improvements necessary for the operation of the facility.

**2727.25 - Navigation Aid (Beacon, Buoy Marker, and Others)**

This designation includes sites where there are nonelectronic signaling or locating devices assisting operators of water craft to determine their positions.

**2727.3 - Railroads**

Authorizations under this category include rights-of-way for the tracks and related facilities used for the operation of a railway system. Many railroads own the land under the mainline and major spurs in fee or control it through a permanent easement. However, additions to the system outside the limits of the grant (such as for additional tracks or new signal devices) require separate authorizations. Consider long-term authorizations for these uses.

**2727.31 - Railroad Right-of-Way**

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

**2727.32 - Railroad Signal Device**

The designation may include lighted crossing gates or approach signs.

**2727.4 - Federal Aid Highway Right-of-Way**

Refer to FSM 2730 for policies, authorities, and other direction for granting rights-of-way for roads and trails across National Forest System lands and interests in lands. Their listing here is for cross-reference and to provide continuity in the designation of use codes.

**2727.41 - Department of Transportation (DOT) Easement**

Refer to the direction in FSM 2730.

**2727.5 - Road or Trail Authorization**

Refer to the direction in FSM 2730.

**2727.51 - Forest Road and Trail Act Easement**

Refer to the direction in FSM 2730.

**2727.51a - Cost Shared**

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Refer to the direction in FSM 2730.

**2727.51b - Non-cost Shared**

Refer to the direction in FSM 2730.

**2727.51c - Forest Road**

Refer to the direction in FSM 2730.

**2727.51d - Private Road**

Refer to the direction in FSM 2730.

**2727.51e - Public Road Agency**

Refer to the direction in FSM 2730.

**2727.52 - Federal Land Policy and Management Act (FLPMA) Easement**

Refer to the direction in FSM 2730.

**2727.52a - Forest Road**

Refer to the direction in FSM 2730.

**2727.52b - Private Road**

Refer to the direction in FSM 2730.

**2727.52c - Road Reservation**

Refer to the direction in FSM 2730.

**2727.53 - Federal Land Policy and Management Act (FLPMA) Permit**

Refer to the direction in FSM 2730.

**2727.53a - Forest Road Permit**

Refer to the direction in FSM 2730.

**2727.53b - Private Road Permit**

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Refer to the direction in FSM 2730.

**2727.53c - Temporary Permit to Cooperator**

Refer to the direction in FSM 2730.

**2727.53d - License (Bureau of Land Management)**

Refer to the direction in FSM 2730.

**2727.53e - Trail**

Refer to the direction in FSM 2730.

**2727.53f - Stock Driveway**

Refer to the direction in FSM 2730.

**2727.54 - Wilderness Act Authorization for Road and Trail**

Refer to the direction in FSM 2730.

**2727.6 - Pipeline - Non-Energy Related**

This category includes only pipelines whose purpose is to transport material other than water or oil and gas. See FSM 2729 for a description of pipelines used for transmission of water. See FSM 2726.3 for direction on oil and gas pipelines.

**2727.61 - Slurry Pipeline**

A slurry system consists of a finely divided material that uses a liquid (usually water) as a transportation medium. Examples of material carried in these systems include coal, borax, and such.

**2727.7 - Cableway and Conveyor**

**2727.71 - Tramway or Conveyor**

These systems move personnel or material by means of cables or belts. They often reach several miles in length.

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## **2728 - COMMUNICATIONS**

### **2728.1 - Communication Use**

This special use group includes a variety of communication use categories, which utilize National Forest System land. Typically, the use occurs on a designated site and includes buildings, towers, and other support improvements. For further direction, refer to FSH 2709.11, chapter 90.

### **2728.2 - Telephone and Telegraph**

#### **2728.21 - Telephone and Telegraph Line**

Use this designation when authorizing telephone or telegraph uses not financed through the Rural Electrification Administration.

#### **2728.22 - Telephone Line, Rural Electrification Administration Financed**

Refer to FSH 2709.11, chapter 30 for direction on fee administration. See FSH 2709.11, chapter 40 for direction on permit administration.

#### **2728.23 - Fiber Optic Cable**

This category includes fiber optic system uses on National Forest System lands. Components of such systems include fiber optic cables, conduits, and individual fibers. See FSH 2709.11, section 48.23 for detailed direction on the processing of applications, issuance of authorizations, and establishment of rental fees for fiber optic cable uses on National Forest System lands.

### **2728.3 - Other Communication Facilities**

This category includes cable television and other systems that provide a communication service solely by wire or cable transmission. See FSM 2728.2 for direction on telephone and telegraph systems.

#### **2728.31 - Other Communication Improvement**

Use this designation when authorizing cable television or other uses not financed through the Rural Electrification Administration.

#### **2728.32 - Other Communication Improvement, Rural Electrification Administration Financed**

Refer to FSH 2709.11, chapter 30 for direction on fee administration. See FSH 2709.11, chapter 40 for direction on permit administration.

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**2729 - WATER (NON-POWER GENERATING)**

Direction in this section governs non-power generating water uses.

**2729.01 - Authority**

Issue authorizations for the impoundment, storage, transmission, or distribution of water under the appropriate provisions of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761), The Act of October 27, 1986, or if in wilderness, under the Wilderness Act of September 3, 1964.

**2729.1 - Water Transmission [Reserved]**

**2729.11 - Irrigation Water Ditch [Reserved]**

**2729.12 - Irrigation Water Transmission Pipeline, 12” Diameter or More [Reserved]**

**2729.13 - Irrigation Water Transmission Pipeline, Less Than 12” Diameter [Reserved]**

**2729.14 - Water Transmission Pipeline, 12” Diameter or More [Reserved]**

**2729.15 - Water Transmission Pipeline, Less Than 12” Diameter [Reserved]**

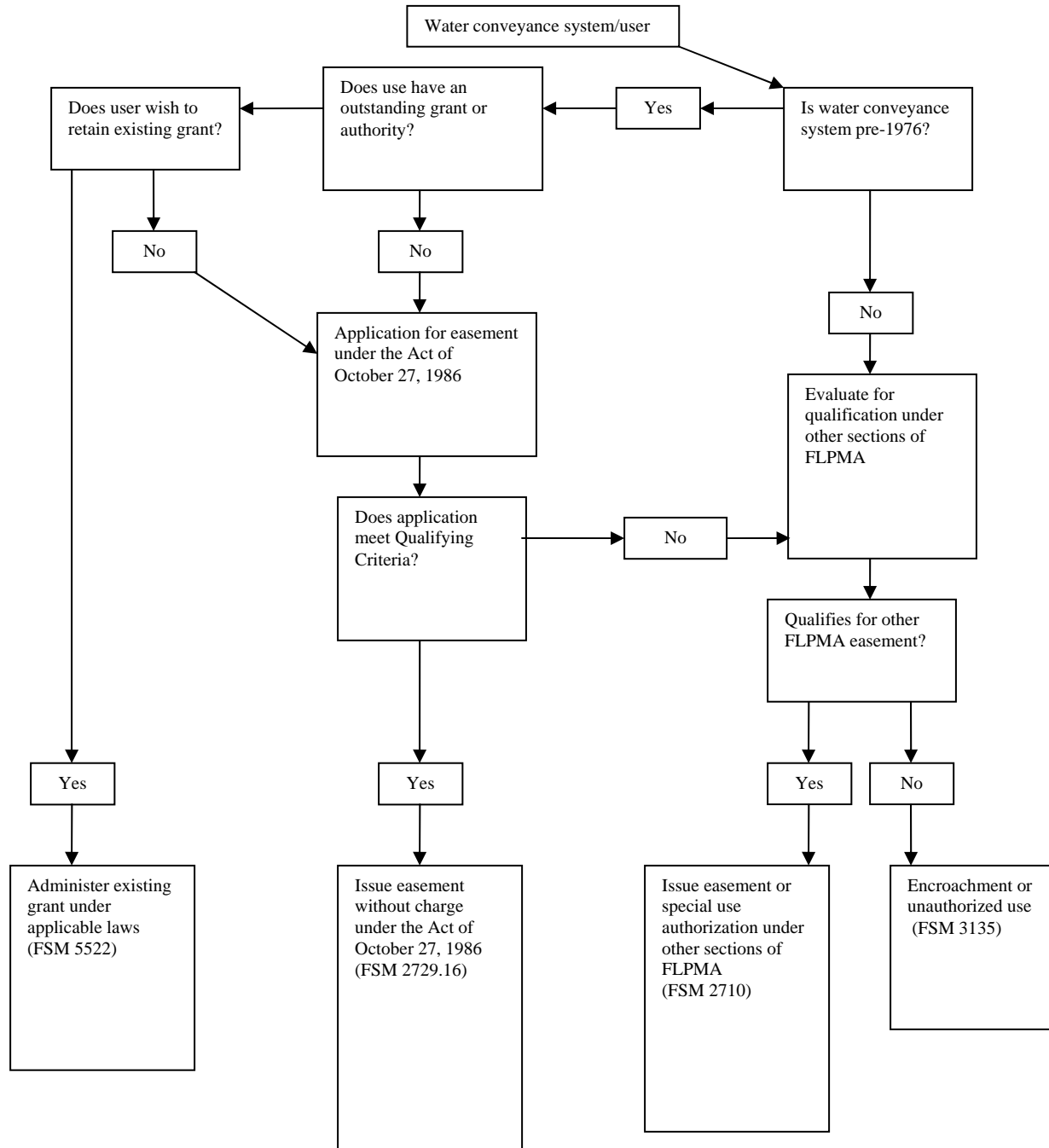
**2729.16 - Water Conveyance System Easements Under the Act of October 27, 1986**

The Act of October 27, 1986, amended Title V of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (43 U.S.C. 1761) to authorize the Secretary of Agriculture to issue permanent easements without charge for water conveyance systems used for agricultural irrigation or livestock watering. The act requires applicants to submit information concerning the location and characteristics of the water conveyance system necessary to ensure proper management of National Forest System lands. Extensions or enlargements constructed after October 21, 1976, do not qualify for an easement, and must be covered by other authorities (FSM 2729.16p). Exhibit 01 is a flowchart for evaluating applications for easements under the Act of October 27, 1986.

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**2729.16 - Exhibit 01**

**WATER CONVEYANCE SYSTEM ANALYSIS/EVALUATION FLOWCHART**



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### **2729.16a - Qualifying Criteria for Issuance of Easements Without Charge**

Qualifying water conveyance system facilities on National Forest System lands include reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water, including roads and trails required by the owner and/or assignees for maintenance and operation of the system facilities, provided that such water conveyance system facilities were constructed and in operation before October 21, 1976.

The authorized officer must issue an easement without charge for uses under this designation if all of the following criteria are met:

1. The applicant submits a written application on or before December 31, 1996.
2. The system was constructed and placed into operation prior to October 21, 1976. This includes systems for which there was no authority, and those authorized under the following acts:
  - a. The Act of July 26, 1866 (43 U.S.C. 661).
  - b. The Act of March 3, 1891 (43 U.S.C. 946-949).
  - c. The Act of June 4, 1897 (16 U.S.C. 473-475, 477-482, 551).
  - d. The Act of February 15, 1901 (43 U.S.C. 959).
  - e. The Act of February 1, 1905 (16 U.S.C. 524).
3. The National Forest System lands occupied by the system are in one of the following States where the appropriation doctrine governs the ownership of water rights: Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, Nevada, North Dakota, South Dakota, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming.
4. The applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system.
5. The water conveyance system or that portion of the system for which the application applies is used solely for agricultural irrigation or livestock watering purposes at the time an application is submitted. Agricultural irrigation and livestock watering uses are distinguished from industrial and municipal water uses, but include incidental domestic use of water which may be either consumptive or non-consumptive.

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6. The originally constructed facilities comprising the water conveyance system have been in substantially continuous operation without abandonment.
7. The system or portion of system submitted by applicant is not an enlargement or extension constructed after October 21, 1976. Enlargements or extensions constructed after October 21, 1976, are considered a new use and require a separate authorization under the applicable sections of FLPMA and 36 CFR part 251 (FSM 2729.16p). Maintenance and minor improvements necessary to maintain the original capacity are not considered enlargements.
8. The use served by the water conveyance system is not located solely on Federal lands.
9. The system is identifiable by a recordable survey. Recordable survey, as used in the act, is one which allows the authorized officer to locate the water conveyance system facilities on the ground, and allows the authorized officer to post the water conveyance system facilities on Forest Service land status records. There is no statutory requirement that the survey be recorded.

**2729.16b - Documents That Meet Forest Service Survey Requirements**

The following are examples of documents that meet the Forest Service survey requirements if tied to an acceptable land survey monument and if they accurately depict the location of the system: State ditch location statements; deeds; maps; public land surveys; centerline surveys; metes and bounds surveys; plats; orthophotoquads; topographic quads; or any combination of the above. For reservoirs, the applicant must furnish copies of the high water line surveys filed with the State Engineer, if available. No easement shall be issued until these depictions are confirmed in the field by the authorized officer.

An acceptable land survey monument is any existing or original Bureau of Land Management or General Land Office corner; Homestead Entry Survey or Mineral Survey corner; or, if none of these corners exists within two miles of either the point of diversion or points of ingress or egress on National Forest System lands, a described and photo-identifiable monument. Such monuments may be permanent physical features used by surveyors as local custom or practice.

**2729.16c - Application Procedure and Requirements**

The authorized officer shall ensure that the applicant meets the qualifying criteria listed in FSM 2729.16a. Pre-application discussions should assist the user in determining whether it is reasonable to proceed with an application (FSM 2729.16, ex. 01). Require the applicant to submit only the minimum information needed. The authorized officer shall acknowledge the receipt of all applications with a letter.

An application consists of:

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1. A completed Special Use Application and Report (Form SF-299), or a letter containing the information requested on the form.
2. Documentation supporting the applicant's claims to having a grant or easement issued under the acts repealed by FLPMA (FSM 5520).
3. Submission of information qualifying as a recordable survey. Only the minimum information needed to post status records and locate the improvements on the ground is required.
4. Submission of additional information concerning location and characteristics of the system as requested by the authorized officer as necessary to recognize and protect the water system and other National Forest System uses established before or subsequent to the water system. Examples include: points at which the water system enters and exits natural channels used to carry water, typical cross-sections, headgates, diversion structures, roads, locks, gauges or other flow measuring devices, crossings by roads and other easements, flumes, dam specifications, reservoirs, and pipelines.

**2729.16d - Evaluation of Application**

1. Existing water conveyance system facilities may have been authorized under a Forest Service special use authorization or by an easement or grant issued by another agency, usually the Department of the Interior.
  - a. The authorized officer should be prepared to discuss with the holder advantages and disadvantages of applying for an easement or retaining the existing grant. Advise users that one purpose of FLPMA is to resolve title claims arising under statutes repealed by the act, but that there is no obligation to apply for an easement under this designation. Water users may choose to continue the use under existing authorizations and grants.
  - b. The issuance of a special use authorization to a water user does not necessarily extinguish existing easements and grants issued under statutes repealed by FLPMA. However, the act requires an applicant to relinquish any existing easements and grants as a condition of obtaining an easement under the act.
  - c. If an applicant claims to have a grant or easement issued under the acts repealed by FLPMA, advise the applicant to submit documentation supporting the assertion as part of the application (FSM 2729.16c, para. 2).
    - (1) Water conveyance system grants issued under the Act of July 26, 1866 (43 U.S.C. 661) were not formally documented and may be shown by water decrees, deeds, ditch location statements, field survey notes filed by the Bureau of Land

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Management (BLM) water rights applications, testimony, court decrees, permits, water use records, water administrative records, irrigation records, ditch rider notes, or other historic data.

(2) Most easements established under the Act of March 3, 1891 (26 Stat. 1095) were issued by the Department of the Interior and a search by the applicant of the BLM and Forest Service records may provide information that will aid in verification of the easement.

2. Where no prior easement or grant exists, but the water conveyance facility occupied National Forest System land prior to October 21, 1976, determine if the applicant holds a valid interest in the water conveyance system facilities and water rights.
3. If an easement or grant is shown to exist and no easement is sought under this section, the authorized officer must administer existing easements or grants under the applicable laws and the regulations of the agency originally assigned administration of the use (FSM 5522.12). (Most of the relevant U.S. Department of Interior regulations appear at 43 CFR part 2800.)
4. Determine if the existing use meets all of the other criteria listed in FSM 2729.16a. If the use meets all of the criteria, the authorized officer must offer an easement at no charge.
5. Authorized officers should explain the benefits of the authorization or easements under the authority of the act to water users who have no valid existing right or current authorization. If, after notice, the owner fails to obtain a special-use authorization or an easement under the act, the authorized officer shall treat the use as an encroachment and proceed accordingly under the provisions of FSM 5335.

**2729.16e - Easement Preparation and Issuance**

1. Issue the standard Easement for Agricultural Irrigation and Livestock Watering, Form FS-2700-9a, as set out in FSH 2709.11, section 54.4.
2. Record additional information, as set out in FSM 2729.16c, paragraph 4, and attach it to the easement.

**2729.16f - Compliance with the National Environmental Policy Act (NEPA)**

Granting easements under FLPMA for existing water conveyance system facilities, with historic operational activities, is not discretionary and, therefore, does not constitute a Federal action subject to analysis or review. Conditions of the grant, including operations and maintenance activities (FSM 2729.16k), may require environmental analysis and review (FSM 1952.2).

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### **2729.16g - Conversion of Fee Permits Under Other Authorizations to Easements Without Charge**

There is no authority to forgive past due fees billed for existing special use authorizations of water conveyance system facilities built before October 21, 1976, or to discontinue current year billing. When converting an existing fee permit to an easement without fee under the FLPMA, the authorized officer shall proceed as follows:

1. Prior to Receipt of Easement Application. The authorized officer shall continue to bill the established annual fee until the holder submits a complete written application for a easement under the act (FSM 2729.16c) or shows that an outstanding right exists (FSM 2729.17a).
2. Post-Application Receipt. The authorized officer shall defer any new billing of the annual fee for the use until a decision is made on whether or not the use qualifies for an easement without fee.

### **2729.16h - Multiple Users of the Same Water System**

The authorized officer shall issue separate easements to each qualifying person or entity holding a valid interest in the water conveyance system facilities and water right. Many transfers of interests in water rights and water conveyance systems have taken place since the uses were established, and the intent is not to interfere with those transfers. There is no fee for easements issued to users who qualify under the FLPMA. In circumstances where nonqualifying uses are involved under different authorities and fee schedules, determine fees for the nonqualifying uses in proportion to the amount of water allocated to flow through the system under each authorization.

### **2729.16i - Amendments**

Process as an amendment to the easement any changes to the water conveyance system the holder proposes to make, other than minor improvements that do not constitute extensions or enlargements as described in FSM 2729.16a.

### **2729.16j - Transfers**

The provisions of the FLPMA allow transfers of the easement to other agricultural irrigation or livestock watering users without the imposition of fees, terms, or conditions. The new holder must notify the Forest Service of changes in ownership within 60 days. Easements granted under this act terminate if the holder transfers the easement to a person or entity that uses the water for purposes other than agricultural irrigation or livestock watering (FSM 2729.16n). If the water right transfers completely to a nonagricultural user, that user must apply for an authorization under other sections of this act (FSM 2729.16p).

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1. Complete Transfer to Multiple Users. If the holder of an easement issued under the FLPMA sells water rights to an agricultural irrigation or livestock water user and to a nonagricultural user, the holder may transfer the easement to the agricultural user. However, the nonagricultural user must apply for an authorization under other sections of the act (FSM 2729.16p).

2. Partial Transfer to Multiple Users. If the holder of a easement issued under FLPMA retains some water rights, sells a portion to an agricultural irrigation or livestock water user and the remaining portion to a nonagricultural user, then the holder retains the easement under the act, and the new agricultural user must apply for an easement under the act. The nonagricultural user must apply for an authorization under other sections of the act (FSM 2729.16p).

### **2729.16k - Operations and Maintenance**

Require water users to review operations and maintenance with the authorized officer prior to initiation of use under the new easement issued under FLPMA. The water user may instead prepare a written plan by mutual agreement with the authorized officer. The plan should describe how facilities will be operated and maintained to prevent unacceptable damage to National Forest System lands and resources. Operations and maintenance plans should be kept current, and should be attached to the easement.

### **2729.16l - Liability**

The easement holder is liable for the damage to National Forest System lands caused by the holder's negligence, intentional acts, or failure to comply with the terms and conditions of the easement or any applicable law. If a water conveyance system facility deteriorates and threatens persons or property and, after consultation, the easement holder refuses to perform the repair necessary to remove the threat, the Forest Service may perform the repair and maintenance on the facilities and assess the holder for the cost (43 U.S.C. 1761).

### **2729.16m - Relinquishment of Easement**

Holders of easements issued under the FLPMA may apply for a replacement easement under other sections of the act. The holder may retain the existing easement until the authorized officer has processed such applications (FSM 2729.16o). The holder must then relinquish the existing easement when the new easement is authorized.

### **2729.16n - Terminations**

The act provides for termination of the easement under three circumstances: change in the end-use of the water to a nonqualified use, abandonment, or termination under the provisions of section 506 of FLPMA.

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1. The authorized officer must terminate an easement under the terms of FLPMA if the water conveyance system facilities are used for any purpose other than agricultural irrigation or livestock watering. The water user must apply for a replacement authorization under other applicable sections of the act (FSM 2729.16o).
2. The authorized officer must terminate easements that meet the conditions of abandonment. A determination of abandonment is based on a rebuttable presumption of abandonment, which is a failure of the holder to use the facilities for agricultural irrigation or livestock watering for any continuous 5-year period. The authorized officer must make a preliminary review of all the facts to determine if the right-of-way meets the conditions of abandonment. Before proceeding to terminate an easement, the authorized officer must ask the owner of the facilities to voluntarily relinquish the easement. If the owner does not relinquish the easement, the authorized officer shall refer the matter to the Office of General Counsel (OGC) for advice on how to proceed.
3. The authorized officer may initiate action to terminate an easement for breach of terms and conditions. Regulations at 36 CFR 251.60 and 7 CFR 1.130 - 1.151 delineate the process for termination of easements as described in section 506 of FLPMA. The action requires a formal proceeding before a Department of Agriculture Administrative Law Judge. The authorized officer shall refer the case to OGC for advice on how to proceed.

### **2729.16o - Reporting Use**

Use code 916 in the Forest Land Use Reporting system (FSM 2790) for water conveyance system easements issued under FLPMA.

### **2729.16p - Water Conveyance Systems Under Other Authorities**

Follow the direction in FSM 2710 and 2720 for authorizing water systems under other sections of FLPMA. Enlargements or extensions constructed after October 21, 1976, are considered a new use and require a separate authorization under the applicable sections of FLPMA and 36 CFR Part 251. This does not apply to maintenance and minor improvements to a system.

See FSM 5522 for systems covered by outstanding Federal grants and agreements.

### **2729.16q - Fee Refunds for Outstanding Authorizations, Grants, or Other Situations Where Fees Were Erroneously Charged**

Discontinue billing and process fee refunds for confirmed holders of grants issued under the Act of July 26, 1866, and easements authorized under the Act of March 3, 1891. Refunds are given for the period starting with December 31 of the calendar year preceding the request for confirmation of the grant. Direction for administering outstanding authorizations and grants is contained in FSM 5522.

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**2729.2 - Impoundment [Reserved]**

**2729.21 - Debris and Siltation Impoundment [Reserved]**

**2729.22 - Dam, Reservoir [Reserved]**

**2729.23 - Water Diversion, Weir [Reserved]**

**2729.24 - Reservoir [Reserved]**

**2729.25 - Dam, Reservoir, Public Law 99-545 [Reserved]**

**2729.26 - Reservoir, Public Law 99-545 [Reserved]**

**2729.3 - Development [Reserved]**

**2729.31 - Well, Spring, Windmill [Reserved]**

**2729.32 - Stock Water [Reserved]**

**2729.33 - Wildlife Water Supply Reserved**

**2729.34 - Fish Ladder [Reserved]**

**2729.35 - Water Storage Tank [Reserved]**

**2729.4 - Measurement [Reserved]**

**2729.41 - Stream Gauging Station [Reserved]**

**2729.42 - Water Quality Monitoring Station [Reserved]**

**2729.5 - Water Treatment [Reserved]**

**2729.51 - Water Treatment Plant [Reserved]**