

FAC Agree.

MEMORANDUM OF UNDERSTANDING

BETWEEN

UNITED STATES DEPARTMENT OF AGRICULTURE
Forest Service

and

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Highway Administration

Regarding the Appropriation and Transfer of
National Forest System Lands for Highway Purposes

I. Purpose: The United States Department of Agriculture, Forest Service (hereinafter called the FS) and the United States Department of Transportation, Federal Highway Administration (hereinafter called the FHWA) recognize the need for streamlined, nationally consistent procedures by which the FHWA may appropriate National Forest System lands for the use of Interstate and certain highways under Chapters 1 and 2 of Title 23, United States Code (23 U.S.C.). Chapter 1 highways are owned, planned, developed, constructed, operated and maintained by State and local governments (hereinafter called State); the FHWA's responsibilities consist of transferring rights-of-way, providing funds for the construction of the facility, and ensuring compliance with Federal requirements. Forest highways are generally constructed by the FHWA and then transferred to State ownership and control. Within this agreement, the term Highway Agent is used to identify the organization that undertakes the construction and/or maintenance of the highway facility, which organization is typically a State or local government, or the Federal Lands Highway Office of the FHWA.

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

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

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

III. Procedures: Existing procedures for the development of forest highways are contained in the "Memorandum of Understanding

Related to Forest Highways Over National Forest Lands" dated May 11, 1981. This MOU amends and supplements the 1981 MOU, providing simplified appropriation/transfer procedures for both forest highways and Chapter 1 highways. The FHWA and the FS agree to the following procedures:

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

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

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

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

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

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

period of four months to the request for appropriation, the requested right-of-way will be deemed appropriated by the FHWA for transfer to the Highway Agent.

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

G. Forest Service agreement to the appropriation will be in the form of a "Letter of Consent" which clearly states the conditions under which the agreement is given and will be sent to both the FHWA and the State. These conditions involve the following considerations:

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

5. The FS may provide conditions protecting the adjacent National Forest System lands from construction and maintenance activities which may cause off-right-of-way adverse effects, such as wildfire, chemical control of vegetation and animals, runoff drainage, and re-vegetation with nonnative species.

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

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

J. The highway easement deed issued by the FHWA will incorporate and subject the conveyance to the conditions and terms provided by the FS. The FS, acting as the Agent for the FHWA, will work directly with the Highway Agent in monitoring these conditions. If a Highway Agent is not complying with FS conditions, the FS will give notice of noncompliance. If the noncompliance is not corrected within 30 days, the FHWA, upon notice from the FS, will secure compliance informally or, if necessary, take action pursuant to 23 CFR 1.36.

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

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

relinquishment by the FHWA, the lands appropriated will immediately revert to the FS and a formal relinquishing document will be prepared.

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

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

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

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

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

Mike Dornbeck
Chief, USDA, Forest Service

8-20-98
Date

Kenneth R. Wolfe
Administrator, USDOT,
Federal Highway
Administration
6-9-98
Date