



**FSM 2700 - SPECIAL USES MANAGEMENT**

**CHAPTER 2710 - SPECIAL USE AUTHORIZATIONS**

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**Approved:** GLORIA MANNING  
Associate Deputy Chief

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**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 2700-99-3 to 2720.

<b>New Document</b>	2710	94 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	!2710 Contents (Amendment 2700-96-1, 11/6/96) 2710-2712 (Amendment 2700-92-6, 10/2/92) 2713-2714 (Amendment 2700-92-15, 10/7/92) 2715-2715.11c (Amendment 2700-92-16, 10/7/92) 2715.11d-2715.14 (Amendment 2700-94-3, 3/16/94) 2716-2719 (Amendment 2700-96-2, 11/6/96)	4 Pages 19 Pages 9 Pages 32 Pages 16 Pages 19 Pages

This amendment incorporates into one document for the entire chapter FSM 2710 the sections previously issued in separate documents, and makes minor formatting and editorial changes throughout the chapter.

2711 - 2711.5 - Corrects references to Forest Service Handbook (FSH) 2709.11, section 50, dealing with the various types of special use authorizations.

2711.31 - Establishes a new code for direction previously contained in FSM 2711.6 regarding the Alaska term permit.

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**Digest--Continued:**

2712 - 2713.31 & 2713.4 - 2713.6 - In these Manual sections, adds cross-references to FSH 2709.11, chapter 10, for direction on processing requests and preparing special use authorizations for the occupancy and use of National Forest System lands. The direction formerly at FSM 2712 - 2713.31 pertaining to the processing of applications for the occupancy and use of National Forest System lands and FSM 2713.4 - 2713.6 pertaining to the preparation of special use authorizations has been moved to FSH 2709.11, chapter 10. The direction moved to the Handbook has been revised to conform to changes adopted to the agency's rules at Title 36, Code of Federal Regulations, Part 251, Subpart B, concerning noncommercial group uses (published in the Federal Register, August 30, 1995; 60 FR 45257) and streamlining of the special uses application and authorization process (published in the Federal Register, November 30, 1998; 63 FR 65949). Direction regarding the prospectus previously at FSM 2712.2 has been recoded to FSM 2712.1.

2713.1 - 2713.3 - Recodes to FSM 2713.1 and 2713.11 the direction on liability and insurance coverage formerly in FSM 2713.32. Recodes to FSM 2713.2 the direction on indemnification provisions formerly in FSM 2713.33. Recodes to FSM 2713.3 the direction on performance bonds formerly in FSM 2713.34. In addition to recoding, makes minor editorial and formatting changes throughout these sections; no substantive changes have been made to the direction in these sections.

2714 - Reorganizes the direction in this section (regarding amendment of authorizations) into enumerated paragraphs and makes minor editorial and formatting revisions. There are no substantive changes to the direction in this section.

2715 - 2719 - Makes minor editorial and formatting revisions to these sections (regarding fees (FSM 2715) administration of permits (FSM 2716); financing of permit improvements (FSM 2717); use restrictions and limitations (FSM 2718); and uses for which special use authorizations are not required (FSM 2719)). Also convert to electronic format exhibits in FSM 2715 previously available only in paper copy format. There are no substantive changes to the direction in these sections.

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## **2710.1 - Authority**

(For further direction on special uses authorities, see FSM 2701.)

### **2710.11 - Statutory Authority**

Several acts of Congress authorize occupancy and use of National Forest System lands and interests in lands administered by the Forest Service. The applicable statutory authority determines the appropriate special use authorization. Provisions of these acts are in the Forest Service publication, "Principal Laws Relating to Forest Service Activities."

#### **2710.11a - Types of Authorizations Provided for by Statutory Authorities**

Most acts commonly refer to the intended form of authorization in general terms and often indicate more than one form of authorization. The type of document actually prescribed by the requirements of the act is sometimes quite different in legal definition than that implied by the general terminology of the act. Policy may restrict use of certain types of authorizations in specific situations.

The statutes that follow provide for the usual types of authorization documents indicated. See FSM 2701 for summaries of these authorities, and refer to FSH 2709.11, section 19, exhibit 03 for a guide to the types of uses, authorization documents, and terms authorized by these laws.

1. Act of June 4, 1897 (16 U.S.C. 551). Permits and temporary permits.
2. Act of June 8, 1906 (16 U.S.C. 432). Permits and temporary permits.
3. Act of March 4, 1915 (16 U.S.C. 497). Term permits.
4. Mineral Leasing Act of 1920 (30 U.S.C. 181). Easements, permits, and temporary permits.
5. Title III, Act of July 22, 1937 (7 U.S.C. 1010-1012). Easements, permits, and temporary permits.
6. Act of March 30, 1948 (48 U.S.C. 341). Term permits (Alaska only).
7. Act of April 24, 1950 (16 U.S.C. 580d). Term permits and permits.
8. Act of September 3, 1954 (43 U.S.C. 931c-931d). Easements, permits, and term permits.
9. Wilderness Act of September 3 (1964, 16 U.S.C. 1121, 1131-1136). Permits and temporary permits.

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10. Land and Water Conservation Fund Act of September 3, 1964 (16 U.S.C. 4601). Permits.

11. Act of October 13, 1964 (16 U.S.C. 532-538). Easements.

12. Act of October 21, 1976 (43 U.S.C. 1701). Easements, leases, and permits.

13. American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996). Permits.

14. Archeological Resources Protection Act of 1979 (16 U.S.C. 470). Permits.

15. Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3210). Easements and permits.

### **2710.12 - Regulations**

The principal regulations of the Secretary of Agriculture that are applicable to Forest Service special use authorizations are in Title 36, Code of Federal Regulations, Part 251 (36 CFR part 251) (FSM 2701).

### **2710.2 - Objective**

(For direction on objectives, see FSM 2702.)

### **2710.3 - Policy**

(For further policy direction, see FSM 2703.)

Ensure that the correct instruments (FSM 2710.1) are used to authorize the occupancy and use of National Forest System lands. If uncertain of which instrument to use, request technical assistance from the next higher organization level before proceeding.

### **2710.4 - Responsibility**

Refer to FSM 2704 for responsibilities and delegations of authority relating to special use authorizations.

### **2710.5 - Definitions**

See 36 CFR 251.51 and FSM 2705 for definitions of the terms used in this chapter.

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## **2711 - AUTHORIZATIONS**

### **2711.1 - Temporary Permit**

(For further direction on temporary permits, see FSH 2709.11, sec. 53.14.)

A temporary permit terminates within 1 year or less after the approval date. All other provisions applicable to permits apply fully to temporary permits. Issue temporary permits for seasonal or short-duration uses involving minimal improvement and investment.

### **2711.2 - Permit**

(For further direction on permits, see FSH 2709.11, sec. 53.11.)

A permit serves as a permissive license for uses of National Forest System lands that are of short duration, but usually greater than one year, and that do not involve permanent commitment of National Forest System resources.

The Forest Service may amend the permit at any time when it is in the public interest to do so. Forest officers shall discuss contemplated changes with the holder and shall attempt to obtain consent from the holder; however, the holder's concurrence is not required for implementation. The authorized officer may issue a permit instead of a term permit (FSM 2711.3) when the holder is required to make improvements to the facilities or the permitted services. Upon completion of the improvements or correction of deficiencies, the authorized officer may issue a term permit.

### **2711.3 - Term Permit**

(For further direction on term permits, see FSH 2709.11, sec. 53.2.)

When authorized by law, term permits ensure a stability of tenure and are appropriate for facilities constructed for long-term use. Term permits are not appropriate for temporary facilities or uses.

1. By their conditions, term permits create an obligation against the United States by requiring the United States to pay for any improvements authorized by permits which the Forest Service revokes for reasons other than breach of provisions prior to the end of the term or by mutual consent with the holder as described in the following paragraph 4.

When a term permit expires, the United States is not obligated to pay for the holder's improvements or to issue a new authorization. Make decisions on reissuance through normal environmental (FSH 1909.15, ch. 30) and other analysis procedures in response to the holder's application for a new authorization. If the decision is not to issue a new authorization, the holder is responsible for removing improvements according to the provisions of the permit.



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Policies on specific uses described in FSM 2720 may require advance notice if a permit is not to be reissued.

2. To the extent authorized by law, forest officers may issue term permits for private, commercial, or industrial purposes only when there is no foreseeable public need for the area within the term period.

3. Forest officers may withhold the issuance of a term permit when necessary to ensure the correction of unsatisfactory conditions of the facilities or services provided. Upon correction of the deficiencies, the forest officer may issue a term permit (FSM 2711.2).

4. Term permits should be limited to a 20-year term; however, in special situations, Regional Foresters may approve an extended period, not to exceed 30 years, when the investment is over 1 million dollars.

When there is mutual consent with the holder, the authorized officer may revoke a term permit and issue a new permit for the remainder of the term or for a new term of up to 20 years. This might occur in the last half of a term when it becomes necessary to make major changes in the permitted facilities. However, when a term permit is the result of competitive bidding, conform to the requirements set forth in the prospectus and do not amend the permit later except as provided in the document. The attorney in charge and fiscal agent should review such cases.

5. The Act of 1915 limits term permits for land needed for construction of improvements to an area not to exceed 80 acres and to a term not exceeding 30 years.

6. The Act of September 3, 1954, which authorizes the issuance of term permits to public agencies for buildings and public works, except rights-of-way, limits the period to 30 years. Payment of a fee representing fair market value of the use is mandatory. This act involves no acreage limitation.

7. Forest officers should not grant term permits if fees are waived in full or in part.

### **2711.31 - Alaska Term Permit**

The Alaska Term Permit Act of March 30, 1948 (FSM 1011) authorizes term permits for special uses on areas in Alaska where the Government is to retain ownership indefinitely.

Use term permits in Alaska only for areas that should remain in Government ownership indefinitely and provided that all other factors conform with the policy governing the issuance of special use permits.

Provide the Bureau of Land Management with an opportunity to review all special use applications under the Alaska Term Permit Act.

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#### **2711.4 - Easement**

(For further direction on easements, see FSH 2709.11, sec. 53.3.)

The policy and procedures for road rights-of-way easements are in FSM 2730.

1. To the extent authorized by law, Regional Foresters may issue easements under the following conditions:
  - a. There is a minimal chance of major conflict with the long-term use of the land as identified in the Forest land and resource management plan.
  - b. The facility meets a community or regional need, such as an electrical transmission line.
  - c. Construction costs are significant, generally over 1 million dollars.
  - d. The facility is already constructed or is to be constructed according to State and Federal standards.
  - e. The holder grants similar privileges to the Forest Service in reciprocity.
  - f. Fair market value fees are paid by the holder.
2. Regional Foresters shall not issue easements when:
  - a. The fee is waived by the Forest Service in whole or in part, except for reciprocity.
  - b. The facility is experimental or in the development stage.
  - c. The right-of-way is a distribution facility, such as a electrical line or water line.

#### **2711.5 - Lease**

(For further direction on leases, see FSH 2709.11, sec. 53.3.)

A lease is appropriate for rights-of-way authorized by the Federal Land Policy and Management Act. A lease generally grants less interest in National Forest System lands than the interest granted by an easement and provides for more direct control by the authorized officer.

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### **2711.6 - Permits to Associations**

(For further requirements related to permits to associations, see 36 CFR 211.1.)

Permits to associations may be issued for improvements that contribute to the common welfare and are not connected with timber sales, grazing permits, or water power development.

Use the criteria in FSM 2703 when considering association applications for improvements located on National Forest System land. The Forest Service may not require permittees to pay for benefits they receive from the association's permitted improvements, services, or facilities whether or not they are members of an association. Therefore, do not include association clauses in permits. An obligation between a recipient of benefits and the association is a matter of liability between the association and the permittee. The Forest Service is not and cannot be involved or be a party to collection of moneys due the association.

Issue authorizations in accordance with FSM 2703.3 and the following direction:

1. Authorize association improvements by separate permit even if the use is in conjunction with other authorized uses.
2. Charge fair market rental for the use; however, do not charge a rental fee if the use fee is included in another authorized use for which the United States is already receiving compensation (FSH 2709.11, ch. 30).
3. Include permit conditions required for the kind of use permitted.
4. Before issuing authorizations, ensure that associations incorporated under State law have followed the articles of incorporation required in that State. For associations not incorporated under State law, refer to the sample constitution and bylaws in exhibit 01.

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**2711.6 - Exhibit 01**

**SAMPLE OF ASSOCIATION CONSTITUTION AND BYLAWS**

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

CONSTITUTION AND BYLAWS  
of the  
CEDAR RUN  
IMPROVEMENT ASSOCIATION  
CONSTITUTION

Article I.

Section 1. The name of this Association shall be the Cedar Run Improvement Association.

Article II.

Section 2. The purpose of this Association is to form an organization of lot holders and lessees from the Forest Service of cabin sites on the Cedar Run special use tract on the Smokey Bear National Forest, State of Nevada. The objects of this Association shall be to protect the property of its members; to better conditions on the tract by installing water and sewage systems, providing for the collection of garbage, establishing police protection, and preventing and fighting fires; to work in cooperation with the Forest Service in the enforcement of all regulations of the Department of Agriculture with regard to sanitation, fires, public health and recreation on the National Forests; and to do any and all things lawful, just, and necessary to further the interests of this Association as the need presents itself from time to time.

Article III.

SECTION 1. One person from each lot on said tract on which a summer home or other structure is erected under permit from the Forest Service, may become a regular member of this Association by signing the constitution and bylaws and paying the initiation fee provided for in the bylaws.

SECTION 2. Associate members shall include all members of the families of regular members, but an associate member shall not be entitled to vote unless holding a proxy and representing a regular member.

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**2711.6 - Exhibit 01--Continued**

Article IV.

SECTION 1. The officers of the Association shall consist of a president, vice-president, and secretary-treasurer, and executive committee elected from the membership, and they shall hold office for one year or until their successors are elected.

Article V.

SECTION 1. The executive committee shall be composed of the officers of the Association and three additional members elected annually by the Association.

SECTION 2. The president of the Association shall be chairperson of the executive committee.

SECTION 3. The president and any three members of the executive committee shall constitute a quorum to do business.

Article VI.

SECTION 1. The general management and business of the Association shall be carried on by the executive committee.

Article VII.

SECTION 1. Any regular member who transfers or relinquishes his or her permit for a lot on the Cedar Run special use tract shall cease to be a member of this Association.

SECTION 2. All benefits secured from assessments paid the Association by a regular member who transfers or relinquishes a permit to another, shall accrue to the party to whom the permit is transferred or relinquished.

SECTION 3. New permittees may become members of the Association upon the following terms and conditions: (1) That they are permittees of the Forest Service for a lot at the Cedar Run special use tract on the Smokey Bear National Forest; (2) That they sign the constitution and bylaws; Provided, however, that the signature to a copy shall be taken as a signature to the original constitution and bylaws; (3) That they pay into the treasury of the Association an amount equal to the total amount of assessments levied upon each of the members of the said Association for the original installation of any and all projects from which they would benefit. Provided, however, that this will not apply to those who have acquired equities through transfer or relinquishment as stated in Section 2 of this Article; and provided further that nothing in this article shall be construed to relieve a transferee or a permittee from the payment of any dues or assessments which may be levied after the transfer of the permit.

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**2711.6 - Exhibit 01--Continued**

BY LAWS

Article I.

SECTION 1. The annual meeting of this Association shall be held at the Cedar Run District Office on July 3<sup>rd</sup> of each year.

SECTION 2. Special meetings shall be held at such times and places as may be designated by the president or a majority of the executive committee. Written notice of all meetings of the Association shall be sent to the last known address of each member by the secretary-treasurer at least 30 days before the date of such meeting. Notices covering special meetings shall state the purpose for which said meetings are called. No business shall be transacted at a special meeting except as stated in the notice calling the same, unless the members in good standing present at the meeting give their unanimous consent thereto.

No member shall be considered in good standing who is delinquent in the payment of any dues or assessments.

SECTION 3. Except as otherwise provided in the constitution and bylaws, any business of the Association may be transacted at any meeting at which a quorum is present.

Article II.

SECTION 1. The officers of the Association and the executive committee shall be elected by ballot and installed at the annual meeting of the Association or at a special meeting and shall hold office until the next annual meeting after their election or thereafter until their successors have been duly elected and installed. Use the appropriate sentence--(Vacancies shall be filled by election. The president shall appoint replacements to fill vacancies on the executive committee or the Secretary-Treasurer position.)

SECTION 2. The duties of the officers of this Association shall be those that are usually incident to such offices and are as defined in the bylaws or as this Association may direct.

Article III.

SECTION 1. It shall be the duty of the president to preside at all meetings, to supervise the work of the Association, and to direct the work of its officers. He or she shall approve and countersign all checks for the expenditure of money for the Association and shall perform all the duties that devolve upon such office.

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**2711.6 - Exhibit 01--Continued**

SECTION 2. Meetings of the executive committee shall be called by the secretary-treasurer upon request from the president or from a majority of the executive committee or from the supervisor of the Smokey Bear National Forest.

Article IV.

SECTION 1. The vice-president shall perform all duties of the president in the absence of the president or in the event of the president's inability to act.

Article V.

SECTION 1. It shall be the duty of the secretary-treasurer to conduct the correspondence of the Association; to keep all records and accounts; to report to the membership of the Association all assessments ordered by the Association or the executive committee, showing each member's portion; to collect from the members of the Association the assessments made by it or by the executive committee, issue receipts therefore, and keep in a book for that purpose an accurate account of the same; to do all things necessary in the conduct of the business of the Association which may be assigned to the secretary-treasurer by the Association or the executive committee. He or she shall sign all checks and vouchers for disbursing the funds of the Association or funds received by the secretary-treasurer by reason of holding office as secretary-treasurer of the Association, and the vouchers shall show for what purpose such moneys are paid. He or she shall submit a written report to the Association at its annual meeting, giving account of the business transactions of the Association for the year just closed, amounts received and disbursed, for whom and on what account received, and for what purpose paid out. The books of the secretary-treasurer shall be audited at least yearly by such persons as the executive committee may designate, and a report of the audit shall be submitted to the members at each annual meeting. The books of the secretary-treasurer shall be open for inspection by any members of the Association and the Supervisor of the Smokey Bear National Forest at any and all times. The secretary-treasurer shall report to the said Forest Supervisor all changes in the personnel of the officers and executive committee, and all changes in the constitution or bylaws.

SECTION 2. The secretary-treasurer of the Association shall be the secretary of the executive committee.

Article VI.

SECTION 1. For the purpose of providing for incidental expenses, an initiation fee of twenty dollars (\$20.00) shall be charged. The annual dues of each regular member of this Association shall be the sum of ten dollars (\$10.00), payable to the secretary-treasurer on or before May 30<sup>th</sup> in each year.

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**2711.6 - Exhibit 01--Continued**

Article VII.

SECTION 1. Amendments to the bylaws may be made only at the annual meeting by a majority vote if a quorum is present. Amendments to the bylaws in conflict with the rules and regulations of the Forest Service shall be void.

SECTION 2. No business of the Association shall be transacted at any meeting unless a quorum is present. Twenty (20) members or their proxies constitute a quorum to do business, provided, however, that any matter involving an single expenditure of over \$500 dollars shall be passed upon by two-thirds of all members.

Article VIII.

SECTION 1. The order of business of the annual meeting of the Association shall be as follows:

1. Call to order
2. Roll call and ascertainment of standing of members.
3. Ascertainment of a quorum.
4. Reading of minutes of last meeting.
5. Unfinished business.
6. Consideration of reports by secretary-treasurer and auditing committee.
7. Reading of communications.
8. Report of executive committee.
9. Report of special committees.
10. Report of standing committees.
11. Regular business including offering and discussion of resolutions.
12. Election of officers by ballot.
13. Installation of new officers.
14. Admission of new members.





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## **2712 - REQUEST TO USE NATIONAL FOREST SYSTEM LANDS**

Direction for considering requests for the use of National Forest System lands in the special uses proposal, application, and authorization process is contained in FSH 2709.11, chapter 10, and Title 36, Code of Federal Regulations, Part 251, Subpart B (36 CFR part 251, subpart B).

### **2712.1 - Prospectus**

When careful multiple use or functional planning, which is fully responsive to the intent of the Multiple Use and National Environmental Policy acts, indicates that a concession special use opportunity is available and there is a demonstrated public need for the service, make every effort to obtain the best qualified permittee as well as an equitable return to the United States.

This shall be accomplished by issuing a prospectus.

However, where access to the National Forest is across non-National Forest System land, a prospectus shall not be issued until the Forest Service has completed appropriate arrangements for unrestricted public access.

Unless the existence of sufficient competitive interest is already established, public notice shall be given to determine the existence of a competitive interest. As a minimum, one publication of the notice shall be made in a newspaper of general circulation of the locality.

#### 1. Publication-Notice Statements

- a. Location and kind of special use opportunity.
- b. Probable amount of investment that will be required.
- c. Explanation that a prospectus will be issued if competitive interest justifies it.
- d. The place at which interested applicants may indicate interest and secure additional information.

Once it has been determined that a concession is in the best interest of the public, a prospectus shall be issued and proposals invited whenever a competitive interest exists or when it is believed that the issuance of a prospectus will result in better services to the public and/or increased revenue to the United States. No concession special use permit shall be issued involving a total planned investment of more than \$100,000 without first issuing a prospectus and soliciting bids, unless the necessary private lands involved are controlled by the applicant and the development cannot be logically located entirely on National Forest System lands.

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Prospectuses in draft form shall be submitted to the Washington Office for review whenever total planned investment exceeds \$1,000,000 in winter-sports developments and \$250,000 for other concession developments.

Proposals involving private land shall be submitted for Washington Office before negotiation takes place when total investment plans exceed the above criteria.

In soliciting bids, a complete prospectus with a sample permit or permits should be circulated, setting forth the minimum facilities and services which must be furnished, construction requirements, and time limits. Prospective bidders should be informed very plainly that the furnishing of public services at reasonable rates is a major objective and that the Forest Service shall not allow excessive prices. Prospective bidders should be advised to read the sample permits carefully and to discuss them fully if they have questions. The issuance of a prospectus should be given adequate publicity, including at least one public notice in a newspaper of wide local circulation. Some of the more complex proposals will require a prospectus advertising period of 6 months or more.

Bids are solicited on the basis of services required by the public and the minimum fee that will be accepted. The invitations shall clearly indicate that an annual minimum occupancy fee is due that is not refundable, but will be credited against the total calculated annual fee.

It is important that the prospectus state clearly that all Forest Service estimates of costs, expected use, snow conditions, or other business factors are only of a general nature and that it is the applicants' responsibility to make their own estimates the basis of their proposals.

Include in the prospectus all types of development that the Forest Service foresees it might approve to meet a public need. Depending on the situation, it might be stated as required development and optional development. Ask the bidder to include information regarding the optional items. In addition, sufficient latitude should be provided in the prospectus and in the sample permit for approval, within the limits of the capacity of the site and other competing values, of future development which will meet a public need. This provision is necessary so that future expansion will be possible without being inconsistent with the prospectus (FSM 2711.2).

Both the prospectus and the bid submitted by the successful applicant become a part of the special use permit issued for the site.

2. Essential Elements of Every Prospectus

- a. General Description of Area. This description covers those characteristics of the site and surrounding areas which have a bearing on development and operation of the facility being sought. It might include, but is not limited to, location, accessibility, climate, topography, vegetation, local attractions, and recreation opportunities. The use of photographs and maps for descriptive purposes should be considered.

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b. Offering. At a minimum the offering shall include the reasons for the offering, the type of facilities and development being sought, and the types of facilities and development which the Forest Service might approve in the future. A suggested overall site plan might be used for this purpose. It is important that all present and foreseeable development be covered so that there will be common ground for evaluating all bids.

c. Development Program Expected. This covers the minimum development of the site which shall be required by the Forest Service. Requirements regarding the site plan, construction, and timing shall also be specified.

d. Permit. Include a sample permit or permits and a discussion of specific requirements including, but not limited to, the type of permit, fees, charges to the public, insurance, and bonds.

e. Submission of Bids. Include directions on when and where to submit bids. Also specify the material to be submitted with the bid, including a proposed development plan, proposed operational plan, schematic plans for structures and other improvements, cost estimates, expected sales and numbers of users, a financial statement, plans for financing, and business and personal references.

Exercise care not to solicit finished plans or to otherwise require applicants to incur unnecessary expenditures.

For example, in a winter-sports response, lift plans should be schematic and such things as topographic maps, exact tower locations, lift line and snow profiles should not be required.

Financial statements and plans for financing are secured in confidence and are not public information, and the prospectus should so state.

Estimates of numbers of users and expected sales should be provided for at least the first 5 years of operation. This information serves as an indication of the public need being met, and helps to evaluate the proposal. Therefore, it should be provided for a specified period in such form as can be used to compare proposals. For example:

- (1) Number of users by type (day visitors or overnight visitors).
- (2) Number of users by season.
- (3) Number of users by facility used.
- (4) Sales by type of facility or service.

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3. Selection of Successful Applicant. The prospectus shall specify the criteria to be used. These include, but are not necessarily limited to, the:

- a. Kind and quality of service proposed in terms of meeting public need.
- b. Applicant's experience in this or related fields and the applicant's qualification to fully satisfy the public need for service.
- c. Verification of financial resources.
- d. Return to the Government.

4. Special Conditions. Include reservations and conditions by the Forest Service, such as the right to reject any or all bids, and the conditions under which the terms of the prospectus may be modified. The Forest Service is not obligated to accept the proposal with the highest bid. The objective is to select an applicant whose proposal will best serve the public need. However, obtain the advice of the attorney in charge and the fiscal agent prior to accepting a bid that does not provide the highest return.

When facilities are needed and a prospectus has produced no bids, conditions including surcharges on fees may be negotiated. In such cases, however, negotiations must be based on the requirement of the prospectus. Significant changes from the prospectus made during negotiations are cause for readvertisement.

## **2713 - PREPARING SPECIAL USE AUTHORIZATIONS**

Direction for preparing special use authorizations to use or occupy National Forest System lands is found in the FSH 2709.11, chapter 10.

### **2713.1 - Liability and Insurance Coverage**

All concession uses authorized by the Forest Service, including resorts, ski lifts, marinas, packers, stores, and service stations that cater to the vacationing or traveling public, involve hazards to the users in varying degrees.

A certain element of risk is involved for individuals engaging in most activities on National Forest System lands. Swimming, boating, skiing, riding, mountain climbing, and even hiking, camping, and picnicking involve such risks in varying degrees.

Individuals engaging in these activities are expected to assume these usual risks. If safe operation, safe equipment, and good supervision are provided by concession authorization holders, it is reasonable to expect participants, personally, to assume risks from accidents not related to provision and operation of safe equipment in safe condition, such as might result from being thrown off a horse, upsetting in a boat, encountering dangerous weather, or being injured by snakes or other wild animals.

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All public use facilities provided by concession authorization holders must be safe for public use and must be operated in a safe manner. To protect the user and the Federal Government from losses for which the authorization holder may be liable, the Forest Service requires authorization holders to carry public liability insurance that names the Government as a coinsured whenever this is in the public interest and practicable.

The minimum amount of property damage and liability insurance authorization holders are required to carry is determined by the Regional Forester on the basis of amount of use, the risks involved, the protection of users, the possible liability of the United States, and the cost of the insurance. Where insurance is required, the amounts shall be not less than \$10,000 for property damage, \$100,000 for personal injury to one person, and a total of \$200,000 for personal injury to more than one person.

When it has been determined to be in the public interest to require the authorization holder to carry liability insurance, the appropriate clause in FSH 2709.11, section 53 must be included in the permit. This clause requires the authorization holder to provide the Forest Service with a copy of the insurance policy. A certificate of insurance satisfies this requirement, if furnished in the format shown in exhibit 01. Formats other than that shown in exhibit 01 are not acceptable, unless they have been reviewed and approved by the Washington Office.

The Boy Scouts of America (BSA) operate a number of organization camps under special use permit and conduct a variety of events and programs on National Forest System lands--some under permit and others not. The Boy Scouts of America carries liability coverage, which is good until canceled and which satisfies the requirements of clauses B-8 and B-10 FSH 2709.11, section 53, when said clauses are included in permits. It is unnecessary to obtain a copy of the insurance policy or a certificate of insurance, because a copy of the policy has been furnished. The policy may be found in FSM 1566.11a, exhibit 01.

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**2713.1 - Exhibit 01**

**SAMPLE OF A CERTIFICATE OF INSURANCE**

This is to certify to the FOREST SERVICE, Dave Tremblo, Forest Supervisor, Angeles National Forest, 701 N. Santa Anita Ave, Arcadia, California, 91006,

that the INSUROR, Pacific Insurance Company, 1234 Isabel Road, Santa Monica, California, 93210, has issued a policy of insurance on behalf of the AUTHORIZATION HOLDER

Marty and Mary Smith, DBA Rock Recreation, Inc., 4747 Oracle Drive, Pasadena, California, 92293

and that, subject to the provisions of said policy of insurance, said policy of insurance will continue in full force and effect for the period ending June 9, 2003.

and that said policy of insurance provides coverage which complies fully with the insurance requirements of the special use authorization issued to the AUTHORIZATION HOLDER on July 21, 2000, said requirements included as clause number B-10 of said special use authorization.

I hereby accept full responsibility for the consequences of such errors or omissions of information as may be contained herein.

Signed

(Authorized representative (Date)  
of ROCK RECREATION, INC.)

Signed

(Authorized representative (Date)  
of PACIFIC INSURANCE COMPANY)

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### **2713.11 - Waiver of Insurance Requirement**

Some authorized activities may be of a passive nature and may occur in a relatively hazard-free environment. In this event, the Forest Supervisor may waive the insurance requirement. Waivers shall not be granted in high-risk situations:

1. Where authorized uses involve the use of boats, aircraft, or pack and saddle livestock.
2. Where the activity is physically strenuous or conducted at high speeds.
3. Where the activity occurs on or near fast-moving water or steep and precipitous terrain.
4. Where the activity involves the use of firearms, weapons, or explosives.
5. Under similar circumstances.

Waivers shall not be granted based on the cost to the authorization holder of liability insurance. The Forest Supervisor's judgment shall be the deciding factor in whether to grant a waiver.

### **2713.2 - Indemnity Provision**

All concession authorizations must include a clause for indemnifying the Government in the event of damage or claims resulting from the permitted use. A legally adequate clause is shown in FSM 2780.

### **2713.3 - Performance Bonds**

Where the Government's interest requires protection from damage to National Forest System lands, or particular circumstances of performance are involved, the authorization holder shall be required to furnish a bond. Form FS-25 shall be used for all bonds (FSM 6506). A bond must not be used to enforce general conditions of the permit; rather it applies only to those requirements which are readily identifiable and which are specified in the clause requiring the bond. The right to revoke for cause provides adequate enforcement authority, and a bond should not be used to supplement this authority.

The bond requirement should be only for the period of time that is needed to satisfy the requirements of the particular situation involved. For instance, a bond required to cover construction should be only for the period involved with the actual construction. In this case, bonding is needed either to ensure the completion of the buildings or other facilities as planned, or to return the site to an acceptable condition if construction plans falter.



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When a bond is no longer necessary inform the permittee so that the permittee may notify the surety. An outright release of a surety is not given. A statement that the case is closed or that the bonded requirement has been met is sufficient.

## **2714 - AMENDMENTS**

1. Authorization amendments may be used to effect minor changes in the authorized area, authorize improvements, or revise the conditions of occupancy.

a. In order to avoid possible misinterpretation and for ease in reviewing permit conditions, an entire clause (or paragraph in the case of permit area description) should be deleted and replaced by the new clause or paragraph. Where possible, remove previous amendments and incorporate their subject matter in the new amendment.

Make all amendments to special use authorizations on Form FS-2700-23. An amendment must be signed by the officer who issued the permit, the officer who is currently authorized to issue the permit, or an authorized alternate. Amendments must also be signed as accepted by the authorization holder unless they are made in accordance with the conditions of the permit, such as for fee adjustment. It is desirable that amendments in the latter category also be signed; however, the holder's refusal to sign would not affect the validity of the amendment.

b. If the amendment procedure would make an authorization difficult to review by virtue of either the number of conditions being amended or the number of amendments, such as for powerline extensions, consideration should be given to consolidation through issuance of a new permit. A new authorization issued for this purpose, however, should not normally provide authorities not originally contemplated.

2. An annual permit may be amended at the discretion of the Forest Service.

3. A term permit may be amended only by mutual agreement between the Forest Service and the authorization holder or in accordance with the terms of the permit. A permit requires compliance with all laws and regulations, however, so a term permit may be amended at any time to bring it into conformance with new or changed laws or regulations.

4. Authorization holders' requests for amendments should be used as opportunities to correct deficiencies and bring permits and conditions of use up to acceptable standards.

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## **2715 - FEES**

For further direction on fees, see chapter 30 of FSH 2709.11, Special Uses Handbook.

### **2715.03 - Policy**

1. Establish and collect fees that reflect fair market value for the use of National Forest System lands and improvements, as determined by appraisal or other sound business management principle.
2. Do not charge less than the minimum fee, unless fees are fully waived or specifically exempted by statute or policy.
3. Require payment in advance of authorizing use.
4. Consider fee waivers and exemptions when requested by the holder or applicant.
5. Grant waivers only when equitable and in the public interest (FSH 2709.11, ch. 30).
6. Update fees to reflect fair market value.
7. Collect all fees, late penalties, and interest charges due the Federal Government.

### **2715.04 - Responsibility**

#### **2715.04a - Washington Office**

1. Director of Lands. It is the responsibility of the Director of Lands to:
  - a. Publish annual index factors for the implicit price deflator-gross national product (IPD-GNP) and consumer price index-urban (CPI-U) in FSH 2709.11 (ch. 30).
  - b. Annually update the linear right-of-way fee schedule (FSH 2709.11, sec. 36.4).
  - c. Implement and maintain fee computation capability in the forest land use report (FLUR) data base system.

#### **2715.04b - Field Units**

1. Regional Forester. It is the responsibility of the Regional Forester to:
  - a. Coordinate regional fee reviews and distribute updated fee index factors.

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- b. Establish regional minimum fees based on fair market value of the use authorized. Update the minimum fee yearly using the appropriate index and provide for review every 5 years.
  - c. Establish fee charges that reflect the cost to transfer use authorizations.
  - d. Update regional fee schedules.
2. Authorized Officer. It is the responsibility of the authorized officer to:
- a. Establish a fee based on fair market value of each use when there is no established regional or national fee schedule (FSH 2709.11, ch. 30).
  - b. On request by the holder or applicant, determine if a fee exemption or waiver is appropriate and document it accordingly (FSH 2709.11, ch. 30).
  - c. Collect payment in accordance with provisions of the authorization (FSH 2709.11, ch. 30; FSM 6530; and FSH 6509.11k).
  - d. Ensure that fee reviews and rate adjustments are conducted as stipulated in the use authorization.
  - e. Provide timely notice of fee reviews to the holder.
  - f. Review fee exemptions and waivers every 5 years and upon renewal of the use authorization.
  - g. Ensure that fees based on revenues are audited at specified periods.

### **2715.1 - Fee System**

The systems available for establishing special use fees are described in FSM 2715.11 to 2715.11e. See FSM 2720, Special Uses Administration, for direction on the system to be used.

### **2715.11 - Fee Based on Sales (Graduated Rate Fee System)**

The graduated rate fee system (GRFS), which is used for determining concession fees, operates by applying a selected rate from an established schedule of graduated rates to the concessioner's gross sales. The rate, or rates, to be used is determined by the proportioned relationship of the concessioner's sales to gross fixed assets (GFA). As sales increase in relation to GFA, a higher rate from the schedule of graduated rates is applied to the higher increment of sales and the total fee increases. Conversely, if sales decrease in relation to GFA, or if GFA increases in relation to sales, lower rates apply to larger portions of sales and the total fee lowers. This means that the permittee and the Government share in increased site productivity as reflected in increased sales and also in business reversals.

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The graduated rate fee system is specifically designed so that it can be updated as more information about concession-type businesses becomes available. This can be done without changes in the system itself. It is the Forest Service's responsibility to make sure that the relevant information is kept current and incorporated into the system as it becomes available.

The system, with its built-in graduation of rates as sales increase above or drop below the break-even point, automatically takes into consideration the productivity of the site in relationship to invested capital and increases or decreases in the enterprise's receipts. Because of this self-adjusting feature, the review of fees at periodic intervals will no longer be necessary.

### **2715.11a - Glossary**

Adjusting GFA. A change in GFA that may be allowed when facilities are sold and a new permit is issued. It differs from updating, which is allowed annually in all permits to recognize addition and deletions. Adjusting involves the use of the construction cost index to arrive at the estimated replacement cost of qualifying items.

Break-Even Point. The point at which a business begins to show a return on investment; for example, the point where net profit before interest charges begins to accrue. It is expressed as a ratio of sales to gross fixed assets.

Commissions. Payments received by a permittee for serving as an agent or providing services not directly associated with his operation, such as selling hunting and fishing licenses, bus or sightseeing tickets for trips off or predominantly off the permitted area, accommodating telephone toll calls, and so on.

Composite Rate Base. A weighting of rate bases computed for a mixed business operation for a specific period of time. It is the average fee rate for the mixed business when sales are twice the break-even point.

Concession. A commercial enterprise operating on National Forest System land under permit for the purpose of providing goods and services to the general public. It is commonly referred to as a commercial public service special use.

Concessioner. The operator or owner of a concession. Also called "Permittee."

Construction Cost Index. An index which reflects the trend of construction costs. It is used to adjust gross fixed assets as provided in the instructions. The index used in the administration of the graduated rate fee system is one published by the United States Department of Commerce in its publication, "Construction Review."

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Development Area. The area of a mixed ownership operation in which are located the land, improvements, and facilities which together constitute a logical single overall integrated business operation regardless of the landownership involved. It is identified to enable the proration of GFA and sales by ownership so an equitable fee for the use of Government land involved can be determined.

Development Boundary. The line delineating the development area.

Franchise. A business activity carried out on the concession area by someone other than the concessioner for which the concessioner provides little if anything in the way of management services or facilities.

Franchise Receipts. Payments made to the concessioner by a franchise operator in addition to rent solely for the right to do business on the concession area.

Granger-Thye Permits. Permits which include provisions for the use by a concessioner of federally owned improvements or structures.

Gratuities. Goods, services, or privileges, such as discounts, gifts, dividends, or benefits, that are furnished to individuals or groups other than the general public, such as stockholders, owners, creditors, or other obligees, officers, employees, or their families.

Gross Fixed Assets (GFA). The total of the original undepreciated cost (not the present value) of the current permittee's investment in improvements and fixtures plus the cost of equipment necessary to generate sales and other income (FSH 2709.11, sec. 53.1).

Net Profit. The amount of income remaining after deducting all expenses and charges for depreciation and amortization, but before paying interest on borrowed money. It is the net return on money invested in gross fixed assets (GFA) by both owner and lenders.

Net Profit After Interest. The amount defined as net profit less the amount paid for interest on borrowed money. It is the return on the owner's net worth.

Permittee. See the preceding definition for "Concessioner."

Rate Base. The average percentage of sales that can appropriately be paid as a fee for any one kind of business by a permittee of average operating efficiency and still realize a reasonable return on investment when sales are twice the break-even point.

Sales. The gross receipts or revenue received from the operation plus value of gratuities, but less commissions, franchise receipts, excluded gratuities, and certain other receipts (FSH 2709.11, sec. 53.1).

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Slope Transport Feet Method and Slope Transport Feet. A method for prorating winter-sport uphill facility capacity on the basis of land-ownership. The slope distance traveled by lifts on each ownership is multiplied by the lift capacity giving a factor called slope transport feet. This factor is then used to determine the weighted capacity of the uphill facilities by ownership.

Surcharge. A payment made in addition to the basic fee calculated under GRFS. Expressed in terms of a percentage of the basic fee so calculated, it results from a bid prior to issuance of a permit or from negotiation. In applying the surcharge, the surcharge percentage is applied to the basic fee and the result added to the basic fee. The surcharge allows the use of the same rate schedule on all permits, yet provides a means for competitive bidding or negotiating a higher fee where appropriate.

Updating GFA. The change in GFA that is made annually when necessary due to the addition or removal of items that qualify as fixed assets. Also see the preceding definition for "Adjusting GFA."

**2715.11b - Business Relationships or Factors Used in Calculating Basic Fees**

1. The calculation of the fee involves the use of four standard business factors.
  - a. Two of these are "constants" included in fee schedules established for nationwide use unless or until they are modified by more current information. In this event, the schedules themselves are changed. As established, they apply to all permits. They are:
    - (1) A break-even point for each of the recognized kinds of businesses, which may be authorized, and
    - (2) The schedules of graduated rates. In concessions involving mixed business, a weighted composite break-even point and a weighted composite base rate applying to the total operation are developed.
  - b. The other factors, which come into play in calculating fees, must be established for each permit operation. They are:
    - (1) The gross fixed assets in which the operator has invested capital in order to generate sales, and
    - (2) The sales and other income generated by the operation.

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2. A fifth factor, a surcharge, may come into play if the permit has been issued under bid procedure or has been negotiated under special circumstances. The surcharge is a percentage rate (bid or negotiated), which is applied to the basic fee calculated from the established schedules. The result is then added to the basic fee. A surcharge will apply for a predetermined period and for no more than 10 years.

**2715.11c - Selecting or Developing Factors To Be Used**

1. Break-Even Point. The break-even point is that point at which a business begins to show a return on investment. It is the point in a business where sales equal costs. It is expressed as a ratio (or percentage) of sales to gross fixed assets (GFA). Break-even points vary between different kinds of business, but in any one kind of business they are reasonably consistent.

In GFRS, the following kinds of businesses are recognized, and break-even points are established for each:

Kinds of business	Break-even point (Percentage)
Grocery	70
Service, food	70
Service, cars	70
Merchandise	70
Service, liquor	60
Outfitting, guiding	50
Service, rooms	40
Rentals & Services	30
Lifts, tows, and ski school	20

See FSH 2709.11, sec. 53.1 for definitions of the kinds of businesses.

In calculating a fee, the break-even point for a single business operation is used as established. In mixed business operations a weighted or composite break-even point is calculated. This is accomplished by:

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- a. Multiplying the break-even point established for each type of business by the percentage that this kind of business bears to the total business,
- b. Then adding these percentages to arrive at the composite break-even point. A worksheet makes this a simple arithmetic step.

2. Rate Schedules. The rates used in calculating fees are taken from graduated rate schedules established in the system (FSH 2709.11, sec. 53.1). These rates are standard for Service-wide use in the direct calculation of basic fees. A basic fee so calculated may be subject to a surcharge set either as the result of competitive bidding or by negotiation.

When operated as single businesses, special schedules are provided for service stations and outfitting-guiding operations (FSM 2721.56, and 2721.53, respectively).

A rate base has been established for each of the several concession businesses. Each is an average percentage of sales which a permittee of average operating efficiency can appropriately pay as a fee for that kind of business when sales are equal to twice the break-even point, and still realize a reasonable return on investment in gross fixed assets.

A balance of sales rate has been developed for each kind of business, which applies to all sales over twice the break-even point.

In applying the rates:

- a. The fee on sales below the break-even point is calculated by applying a rate equal to 50 percent of the rate base.
- b. The fee on sales between the break-even point and twice the break-even point is calculated by applying a rate equal to 150 percent of the rate base.
- c. The fee for all sales over twice the break-even point is calculated by applying the balance of sales rate.

3. Determining Gross Fixed Assets (FSH 2709.11, sec. 53.1). Assets eligible for inclusion in GFA must meet four tests. First, they must be in use and necessary for generation of sales qualifying in fee determination. Second, they must have been or are currently being capitalized in the holder's accounting records. Third, they must be located within the development area boundary. And fourth, they must be tangible.

The amount to be credited to GFA is the original cost to the holder not the current depreciated value.



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Assets leased from others are eligible if they are being capitalized by the holder (capital leases), but operating leases (expensed leases) are not eligible. Refer to Generally Acceptable Accounting Principles (GAAP) for the distinction between "capital leases" and "operating leases."

Capital interest amounts are also included in GFA.

Assets ineligible for inclusion in GFA are intangible assets such as goodwill, liquor licenses, and the special use permit; inventories; expendable or consumable property; assets which are out-of-service or not generating sales on a continuing basis; assets located outside of the development area boundary; luxury assets, to the extent that their design and cost exceeds the functional need; and land.

Vehicles, construction equipment, and portable or mobile capitalized property are eligible for inclusion if such is stored and used at the site, and contribute to the generation of sales during the season of operation. Such equipment and property could be stored and used off-site on a periodic and incidental basis without losing its eligibility for inclusion in GFA.

Normally, capitalized assets eligible for inclusion in GFA are depreciable under State and Federal tax codes. Accordingly, review of the permittee's tax accounting records can serve as an indicator of assets eligible for inclusion in GFA. However, tax accounting standards do not always conform with GAAP. Give preference to GAAP standards in reconciling eligibility of assets in GFA.

Bring existing permits into conformance as time and opportunity allow. Follow these guidelines:

- a. Existing permits contain language allowing inclusion of certain expensed and leased assets. Continue to allow those expensed and leased assets previously allowed and allow such new expensed and leased assets in GFA in accordance with the permit terms.
- b. Include language in permits and disallow existing or new expensed and expensed leased assets (operating leases) in GFA in all new permits; renewal of existing expired permits; and when amending existing permits to authorize major expansions and capital investment, boundary modifications, or other significant changes in the authorizations (FSH 2709.11, sec. 53.1).
- c. GFA will change annually, as appropriate, at the time of fee calculation to recognize additions, deletions, or capitalized modernization. Require holders to submit documentation of such changes along with their annual operating statement.
- d. Sample GFA Determinations. Following is a time spread table, or chart, demonstrating graphically the setting of GFA in 13 representative situations, and some notes explaining the actions indicated by the chart.

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The table represents a hypothetical time interval between the "START" (sometime in the past) and "NOW." There are 14 horizontal lines on the chart extending from the START of the time interval until the end (NOW). The top line indicates that during the time interval the cost of construction, as indicated by the Department of Commerce Construction Cost Index, increased by 50 percent; for example, it would cost \$150,000 NOW to replace an item which has been fully maintained and which was constructed at the START for \$100,000.

The next 13 lines represent the life histories of 13 different but representative permit situations. Indicated are construction cost, change of ownership, losses, additions, and modernizations--all things that might affect GFA. Some basic assumptions are that:

- (1) Acceptable cost records are available,
- (2) The original cost in each situation is the same, \$100,000, and
- (3) All normal necessary maintenance has been carried out.

In the example, the permits are coming under GRFS NOW for the first time because of periodic fee review, issuance of a new permit after termination of a previous one, or a new permit is being issued as a result of sale of the improvements. It is, therefore, necessary to establish GFA for the first time for each of the situations.

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**DETERMINING GFA IN REPRESENTATIVE SITUATIONS**

SITUATION	START	TIME SPREAD		NOW	GFA
	\$100,000	Increased value, per Const. Cost Index		\$150,000	
1.	\$100,000			Sale -0- \$150,000 Sale	-\$150,000
2.	100,000			-0- 120,000	120,000
3.	100,000	Sale -0- 80,000		Sale -0- 120,000	120,000
4.	100,000			Sale -0- 200,000	150,000
5.	100,000				100,000
6.	100,000	Expansion 50,000			150,000
7.	100,000		Expansion 100,000	Fire Loss 50,000	150,000
8.	100,000	Sale -0- 120,000		Sale -0- 150,000	150,000
9.	100,000			Forced Sale -0- 50,000	100,000
10.	100,000	Sale -0- 75,000		Sale -0- 100,000	100,000
11.	100,000	Sale -0- 120,000	Sale -0- 150,000	Sale -0- 180,000	200,000 Sale
12.	100,000	Expansion 100,000	Expansion 50,000	300,000 Sale	See Narrative
13.	100,000	Fire Loss 25,000	Fire Loss 30,000	Improvement 75,000	200,000 Sale

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Situation 1. Sold now for \$150,000. Construction Index shows today's cost at \$150,000, so full credit is given for the sale price and GFA is pegged at \$150,000.

Situation 2. Sold now for \$120,000. Construction Index shows today's cost at \$150,000. However, as credit can only be given for actual investment, GFA is pegged at the sale price of \$120,000.

Situation 3. Sold sometime ago for \$120,000. Previous sale of \$80,000 has no bearing so GFA is pegged at \$120,000, the actual investment of the current permittee.

Situation 4. Sold now for \$200,000. Construction Index shows today's cost at \$150,000. GFA cannot be credited at more than adjusted value regardless of price paid. So GFA is pegged at \$150,000.

Situation 5. Original developer is still the permittee. \$100,000 is all the money he has invested in qualifying GFA items. GFA is, therefore, \$100,000.

Situation 6. Original developer is still the permittee. He spent an additional \$50,000 for expansion. He is credited with the added cost so GFA is \$150,000.

Situation 7. Original developer is still the permittee. He spent an additional \$100,000 to bring total cost up to \$200,000. However, he suffered a \$50,000 loss and has not yet replaced the destroyed structures. GFA can only reflect actual sales producing items, so GFA is \$200,000 less \$50,000 or \$150,000.

Situation 8. Sold some time ago for \$150,000. While this is more than it was worth then, it is the permittee's investment and is worth that much now, so GFA is \$150,000.

Situation 9. Mortgage was foreclosed and sold for \$50,000. The full original cost not adjusted to the present date would be allowed.

Situation 10. Sold now for \$100,000. Past sales have no bearing. Even though the Construction Index indicated today's cost is \$150,000, this is \$50,000 in excess of today's sale price. \$100,000 is creditable to GFA.

Situation 11. Sold now for \$200,000. Past record shows sales at progressively higher than the original \$100,000 cost. However, they have no bearing. As Construction Index value is \$150,000 that is all that may be allowed. GFA is \$150,000.

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Situation 12. Sold now for \$300,000. On two occasions, expansion projects were carried out, one of \$100,000 and the other \$50,000. In determining GFA the original \$100,000 would provide credit of \$150,000 today. The Construction Index changes between the date of each expansion and now would be used to determine today's cost of the expansion of added items. These steps are necessary before it can be determined what part of the \$300,000 sale price would be credited to GFA.

Situation 13. Sold now for \$200,000. GFA today would reflect the initial cost less \$55,000 losses with the difference adjusted per Construction Cost Index today. The \$75,000 would be adjusted by the Index change between its date of expenditure and today. GFA today would then be the sum of the adjusted remainder of original cost plus adjusted cost on the subsequent improvement.

4. Determining Sales and Other Revenue

(1) Sales for the purpose of fee calculation include

(a) Revenue derived from all goods and services sold which are related to operations under this permit,

(b) The value of goods and services traded-off for goods and services received and

(c) The value of gratuities not excluded below. Gratuities include such goods, services, or privileges as discounts, gifts, dividends, or benefits that are furnished to such individuals as stockholders, owners, creditors or other obligees, officers, employees or their families, at rates or under conditions not available to the general public. Such gratuities shall be sales-priced by the permittee at the current price to the public.

(2) The following items shall be excluded from gross receipts or revenue to arrive at sales:

(a) Refunds from returned merchandise and receipts from sales of real and nonrental personal property used in the operation. Sales of property such as rental equipment previously used for generating operating revenue, when sold on the premises, shall be included in gross receipts. Examples of this are rental items, such as boats, motors, skis, or boots, which may be sold periodically and replaced. If such equipment is traded in or sold off premises, the value, or revenue shall be excluded from sales.

(b) Rents paid to the permittee by sublessees, even if based on sales. The gross sales of sublessees are included as provided in the preceding paragraph.

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(c) Amounts received for goods sold, services rendered, or privileges granted at a price lower than the permittee's current price to the public. The full value is included as provided in the preceding paragraph.

(d) Sales taxes paid or payable to taxing authorities and Federal and State gasoline taxes on sales of gasoline collected from customers.

(e) Amounts paid or payable to a Government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets.

(f) Value of sales where the permittee is serving as a collection or sales agent for businesses not directly associated with the permitted operation. This includes such things as bus- or sightseeing-ticket sales for trips not related to activities on the permitted area, telephone-toll charges, and accident insurance sales.

(g) Items listed in a policy statement prepared by the permittee pertaining to gratuities previously approved in writing by the Forest Supervisor. The policy may provide for those furnished to persons present in the interest of public safety; those whose presence will significantly increase sales by publicity for the operation; competitors, judges, and other officials of organized competitive or exhibition events; officials responsible for inspection and administration of the permitted use; and other similar purposes. The policy statement will describe how gratuities are to be recorded. A record of all gratuities shall be kept by the permittee as a part of the records under this permit.

(h) Franchise receipts. See the following paragraph 4b.

(i) Commissions. See the following paragraph 4c.

A sometimes complicated aspect of setting sales stems from the fact that a limited amount of "on the house" gratuities are inherent in most business enterprises. They may take the form of a free meal, a free riding lesson, a ski lift pass, the use of concessioner's facilities, and so forth. These are customary trade practices. As a guide to how much of this should be included in sales for fee calculations, the Forest Supervisor shall secure agreement with the permittee as to the general nature and extent of his planned gratuity program. As part of this, before the beginning of the season the permittee shall provide the Forest Supervisor with a policy statement indicating the nature and extent of the planned gratuity program and who will be the recipients.

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This may include persons present in the interest of safety of the public; those whose presence will significantly increase sales by publicity for the operation; competitors, judges, and other officials of organized competitive or exhibition events; officials responsible for inspection and administration of the permitted use; and other similar purposes.

After review and approval by the Forest Supervisor, the permittee's reasonable adherence to the program shall be controlled as one aspect of the routine inspection of the permitted operation. The policy statement shall remain effective until or unless the permittee requests a change. In event of a change, review and approval shall be handled as under the original plan.

b. Franchise Receipts. These are payments made to permittees by sublessees solely for the opportunity to do business at a specific location. The permittee provides little, if anything, in the way of facilities or services. They may be the only fee paid to the permittee or, if some facilities or services are provided by the permittee, they may be made in addition to a rental fee. The franchise receipts may be in the form of fixed amounts of money or in reduced prices for the franchiser's product or service.

An example of a franchise arrangement is a service station built by an oil company as part of a permitted operation where the permittee has been authorized to operate a service station but has not made the investment. For the privilege, the oil company might include a \$5,000 payment beyond what would normally be considered rent.

In such a case, the landowner, in this instance the Government, should share in the fee. This is because the service station site could be deleted from the permit area and a permit issued directly to the oil company. Then, the entire payment would be collected by the Government. However, it has been determined that there is an administrative advantage to the Government to have only one permittee on an area and the recovery of only a part of a franchise receipt is fiscally sound.

Such additional payments shall usually be divided equally between the permittee and the Government. In special circumstances the division may be negotiated.

Permits shall be modified or revised, if necessary, at the time sublease agreements are approved, to give recognition to the sublease terms considered by the Forest Service to be a franchise or a payment to conduct business. Exacting language shall be used to define the franchise and the percentage split due the United States. This shall cause the incumbent resource managers and the accountants to review the sublease and franchise arrangements and set up controls for fee determination in the future.

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The objective is to secure for the United States an equitable division of the franchise income. Most sublease agreements require legal and fiscal review and, since legal service is not generally available at the Forest level, the agreements should be sent to the Regional Forester for processing through the local Office of the General Counsel prior to acceptance by the Forest Supervisor.

c. Commissions. Commissions are payments received by the permittee for serving as an agent or providing services not directly associated with the operation, such as selling hunting and fishing licenses, bus or sightseeing tickets for trips off or predominantly off the permitted area, accommodating telephone toll calls, and so forth.

Commissions on sales of fishing licenses and other permits, telephone tolls, and so forth, cannot be credited directly to one of the several kinds of businesses shown in the mixed business rate schedules. For fee calculation purposes these amounts are not considered until the Fee Calculation for Concession Permits (worksheet Form FS-2700-19) has been completed. The weighted average fee rate is calculated on the form and applied to the total of commission and other income. The fee from commissions is then added to the fee calculated for sales.

The regular rental fee paid to a prime permittee by a sub-concessioner or sublessee does not enter into the calculation of fees. This is part of the permittee's normal sales profit reflecting rent and a managerial fee. The Government's fee results from the inclusion of the subconcession's sales and GFA in the total fee calculation process.

5. Surcharge.

a. Competitive Fee Rates. Whenever there is a possibility of a competitive interest in an opportunity to operate a National Forest concession, those interested must be afforded a chance to make a proposal. The proposals shall be invited by the issuance of a prospectus describing the minimum requirements of the development. These proposals shall include a description of the way in which the proponent would develop the site, the goods and services the proponent would offer, and the surcharge, if any, the proponent would be willing to pay in addition to the fee calculated from the established fee schedule. A surcharge will be expressed in terms of a percentage to be applied to the basic fee calculated under the graduated rate system. Such a surcharge shall apply for a specific period of years after sales are first generated as stipulated in the prospectus. This may be as long as, but no more than, 10 years. It shall apply to this operation whether ownership changes or not.



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The bid form or proposal must include a statement similar to:

**For a period of \_\_\_\_\_ years after sales are first generated under this operation, the amount of the basic fee calculated according to the established rate schedules shall be increased by \_\_\_\_\_ percent.**

b. Negotiated Fee Rate. Because of the characteristics of the graduated rate fee system (GRFS) which automatically reflect site productivity in the fee rate, fees based on the rates in the established schedules can and shall normally be used as developed. Except when resulting from competitive bidding, higher fees can seldom be justified. These may be a few circumstances, however, such as when true competition is impossible because of the ownership of key private land, and nearby concessions under very similar circumstances are paying a surcharge (as the result of either a bid or negotiation) yet are providing suitable public services and still are receiving a fair return on investment, that a higher fee will be justified. In such circumstances, the higher fee will be negotiated in terms of an equitable surcharge. It will be established for the same period as that of nearby comparative concession permits.

6. Mixed Landownership. Concessions covered by Forest Service special use permits sometimes operate on lands of mixed ownership; that is, a single operation may occupy both public and private land, the former covered by the permit and the latter either owned or controlled by the permittee.

Because there is an unlimited number of possible combinations of ownership and types of operations, it is not feasible to develop a single fee-setting method that will fit all kinds of mixed ownership situations. As a result, developing appropriate fees for the use of National Forest System land in a mixed ownership situation has never been a simple task.

a. Land Valuation Method. Over the years, one type of mixed ownership has been less difficult to handle than others. It is the business with only a small part of its total operation on public land (usually less than 10 percent), and few, if any, concessioner-built facilities on the National Forest System lands. In such instances, a common solution has been the use of a simple land rental fee based on the appraised fair market value of the public land involved. In the few instances where this method of fee setting appears to be desirable, it may still be used. Because high land values are often involved, fees so developed can easily exceed \$3,500 per year. In such cases the normal maximum of \$3,500 for a flat fee does not apply.

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b. Ownership Proration Methods.

(1) The development of mixed ownership fees sometimes becomes more difficult when the use of private and public lands is more interdependent. The activities of most concessions are planned and function as a single integrated operation in which the existence of landownership boundaries plays no part. In most of these situations, experience has shown that the approach to fee calculations most equitable to both the permittee and the Government is one which first identifies and quantifies the characteristics of the total overall integrated operation upon which the fee should be based, and then prorates them equitably to the two ownerships. The fee charged the permittee is based on that part prorated to the National Forest System land. Under this approach, and using GRFS, the fees paid are based only on that share of the concessioner's total sales which can be attributed to the use of National Forest System land, and that part of the total GFA which made those sales possible.

The task of determining the proportions to allocate to each of the landownerships can sometimes become a problem. This is as true of the graduated rate system of setting fees as it has been of earlier systems. Nothing about this system alters the basic relationships that govern the equitable proportioning of that part of an operation which should be credited to private land and that part which should be credited to National Forest System land. Concessioners and Forest officers working together shall be able to use GRFS just as they were able to use the systems, which preceded it.

The first step to be taken in prorating a mixed ownership concession between the ownerships is a very key one. It is the job of determining and reaching agreement upon what area; land improvements, facilities, and equipment are considered as constituting the single overall integrated operation, regardless of the ownership of the land involved. This includes identifying those items, which qualify as credit for GFA and are directly related and essential to the use of the National Forest System land from those which are not. As these items are identified, they should be circumscribed by a line on the site plan or on a separate plan prepared for that purpose. The line shall be known as the development boundary; the area within it as the development area.

Normally, there should be no disagreement as to which facilities or services should be included within the development boundary. Some examples of those to include at ski areas are:

- (a) Lifts and tows, and all supporting facilities.
- (b) Areas cleared and developed for ski trails.

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- (c) Day lodge and/or warming shelters.
- (d) Ticket-sale facilities.
- (e) Equipment rental shop.
- (f) Equipment and concession retail shops.
- (g) Ski school operations and facilities.
- (h) Ski patrol and first-aid facilities.
- (i) Food and beverage services.
- (j) Lodging.
- (k) Parking areas developed for use by skiers and users of other GFA items.
- (l) Roads and utilities necessary to service qualifying items.
- (m) Shops, workhouses, equipment storage buildings, chapel, and employee housing.

Facilities that are not essential to providing public service on the National Forest shall be excluded from the development area. For example, if a ski area is located immediately adjacent to a very adequate source of lodging facilities, additional lodging facilities are not needed by the public. Such facilities developed on private land, for which sales and investment can be isolated from those of the basic operations related to winter sports, would be excluded. On the other hand, there may not be adequate facilities nearby and they must be built to round out the winter-sports operation. In this instance, they may be considered as essential to the use of the National Forest System land, and would be included within the development boundary.

In most instances, the graphic description of the development boundary is all that will be needed. In some cases, however, it may be necessary to provide a supplementing narrative or tabular information sheet. For example, a power line for which capital investment was required of the permittee should be included in GFA. Depending on the nature of the situation, supplementary data may be included in the documentation of GFA or attached to the plat showing the development boundary.

After the development boundary has been established, there still remains the task of prorating the GFA qualifying items within it, and the sales they generate, between the landownerships.

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(2) Several methods of proration have been used in the past. Under appropriate circumstances they may still be used. The standard ones are:

(a) The Investment Method. This has generally been used when the area is small, and investment and earning power on each ownership are high. The direct percentage of investment on each ownership determines that portion of total sales and GFA creditable to the National Forest and used in fee determination. This approach is seldom desirable if other methods are applicable. It will be helpful most often when a property line passes through a building.

(b) The Land Area Method. Where large areas are under permit and there are no other means of determining the National Forest System percent of sales and GFA, the relative division of ownership can be used to determine the portion of sales and GFA creditable to the National Forest System land used in fee determination. A pro rata separation of GFA qualifiers and sales on the basis of relative land area should be confined to situations in which there are no structural GFA items common to the two ownerships. Land improvement GFA items may be present.

(c) The Lift Line Proration Method. In the past, the greatest variety of mixed ownership fee problems has been in connection with winter-sports areas. In most instances, the sales of the total operation have been prorated on the basis of the relative land area involved. This has not always, however, produced wholly equitable fees. This has been recognized as has the fact that of all developments and facilities in the operation, the uphill devices such as (lifts, tows, or tramways) are those most basic to the winter-sports operation, and are those usually located on both ownerships. Their presence reflects the use being made of the land by skiers. As a result, there has been a tendency to explore ways of prorating the total operation in the same proportion that uphill devices are located on each ownership. Several methods have been used to calculate these lift line prorations. The length of lifts, lift capacity weighted by percent of ownership, and vertical lift are some of these. Each has advantages and shortcomings. Even with its limitations, lift line proration generally provides the most equitable means of determining ownership proportions. Therefore, in all but the most exceptional sets of circumstances, when the lift lines of a winter-sports concession involving both private and National Forest System lands are located on lands in both ownerships, the special use fee shall be calculated from sales and GFA information prorated on the basis of the proration of all the lift lines within the development boundary.

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The method of proration to be used shall be the slope transport fee method. In this method, the capacity (or actual use) of each lift is multiplied by the slope distance traveled by that lift through each ownership. This provides a factor called slope transport feet. These factors are added for each ownership and the percentage they bear to the total is determined. The resulting percentages reflect, by ownership, the weighted capacity of the lifts to accommodate skiers.

This method recognizes that both lift length and vertical rise contribute to capacity, yet accommodates the inclusion of horizontal or near horizontal transport lifts reflecting their capacity.

Capacity inputs may be on the basis of manufacturer's rated or the operating capacity, or if a statistically sound actual measured use base has been developed and documented, it may be used. Only one method shall be used in any one permit except where rope tows are present. The capacity at rope tows may be determined by any equitable method available.

Slope distance shall be established as

- (1) One-half of the cable length,
- (2) The length scaled from profile sheets,
- (3) The computed hypotenuse when horizontal and vertical distances are known, or
- (4) As the last resort, the distance measured from tower to tower under the lift line. The best data available, lift by lift, are to be used.

The application of the method is illustrated by the following table.

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OWNERSHIP PRORATION BASED ON SLOPE TRANSPORT FEET METHOD

Lift	Ride capacity per hour <sup>1/</sup>	Slope distance by landownership (in feet) <sup>2/</sup>			Slope transport feet (slope length times capacity)		
		National Forest	Private	Total	National Forest	Private	Total
1	400	2,200	2,000	4,200	880,000	800,000	1,680,000
2	600	3,600	-	3,600	2,160,000	-	2,160,000
3	300	3,800	-	3,800	1,140,000	-	1,140,000
4	300	3,000	-	3,000	900,000	-	900,000
5	800	4,400	-	4,400	3,520,000	-	3,520,000
6	1,200	2,900	300	3,200	3,480,000	360,000	3,840,000
7	800	6,000	-	6,000	4,800,000	-	4,800,000
8	600	900	-	900	540,000	-	540,000
9	400	-	2,600	2,600	-	1,040,000	1,040,000
10	400	-	1,400	1,400	-	560,000	560,000
Totals	-	26,800	6,300	33,100	17,420,000	2,760,000	20,180,000
Percent of total			-		86.3	13.7	100

<sup>1/</sup> Manufacturer's rated capacity, the operating capacity, or measured use if a statistically sound measured-use base has been developed. Except where rope tows are present, only one method will be used. The capacity of rope tows may be determined by any equitable method.

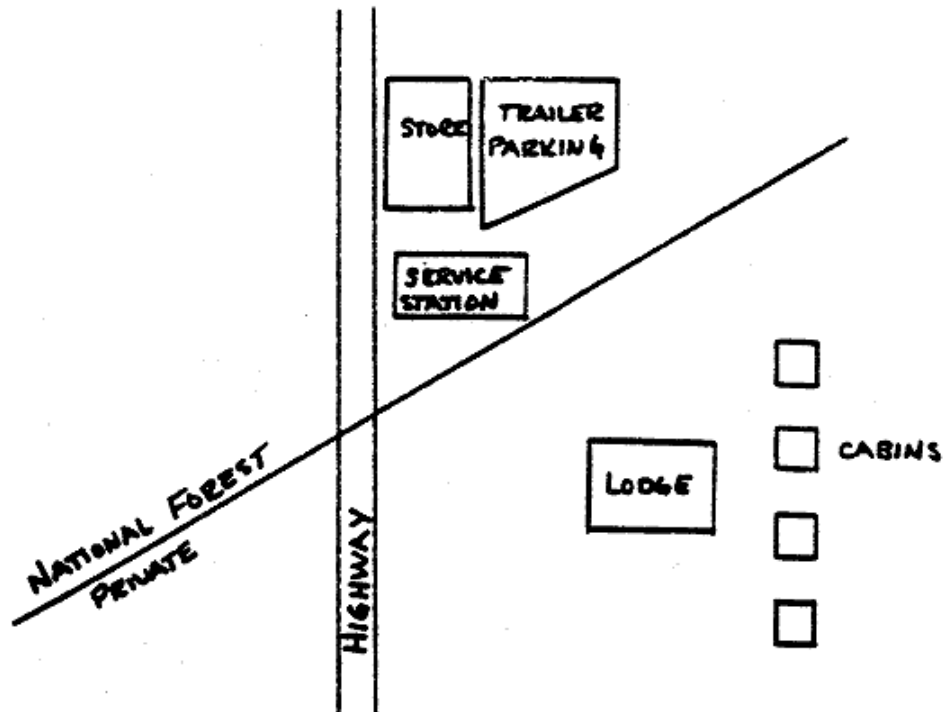
<sup>2/</sup> One-half the cable length, slope distance as measured from tower to tower under the lift line or scaled from profile sheets, or the computed hypotenuse when horizontal and vertical distances are known. Use best data available lift by lift.

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c. Sample Prorations. On the pages that follow are some diagrammatic sketches and accompanying statements, describing a series of possible mixed ownership situations. "Solutions" show reasonable answers to the question, "How are GFA and sales prorated?"

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(1) Situation. A resort with main lodge and cabins on private land, trailer parking, service station, and store on National Forest. Investment and sales on each landownership are known.

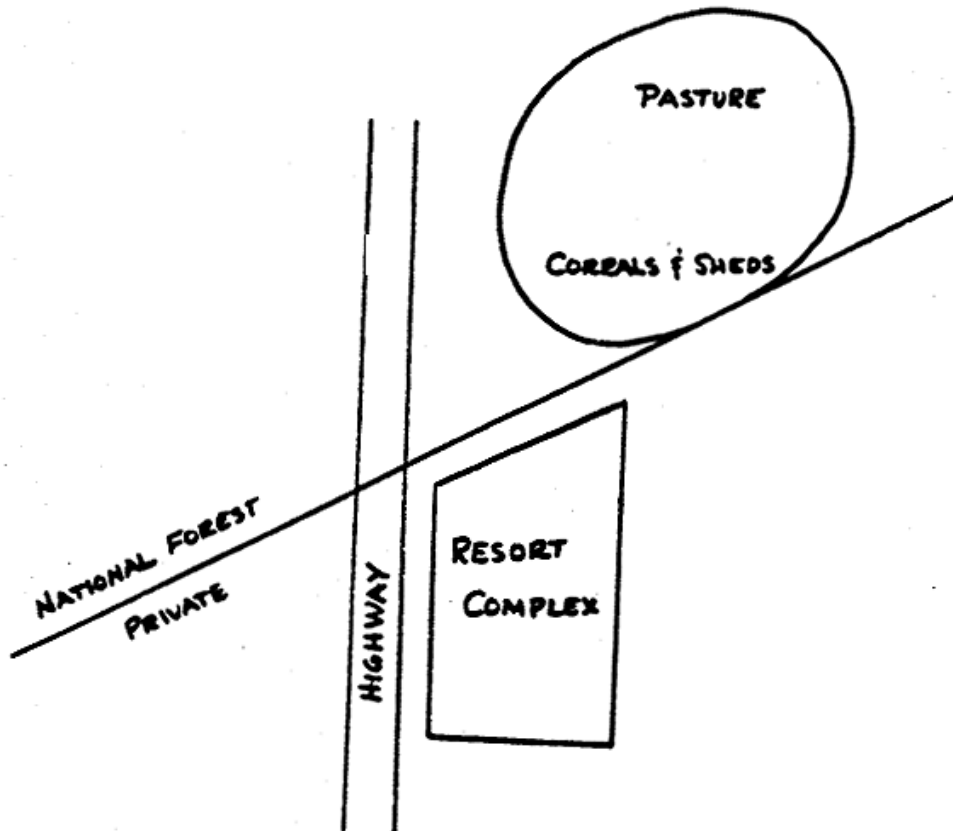


Solution. Fees will be based on GFA and sales from the portion of the business on National Forest. The investment and sales of private land development will be disregarded.



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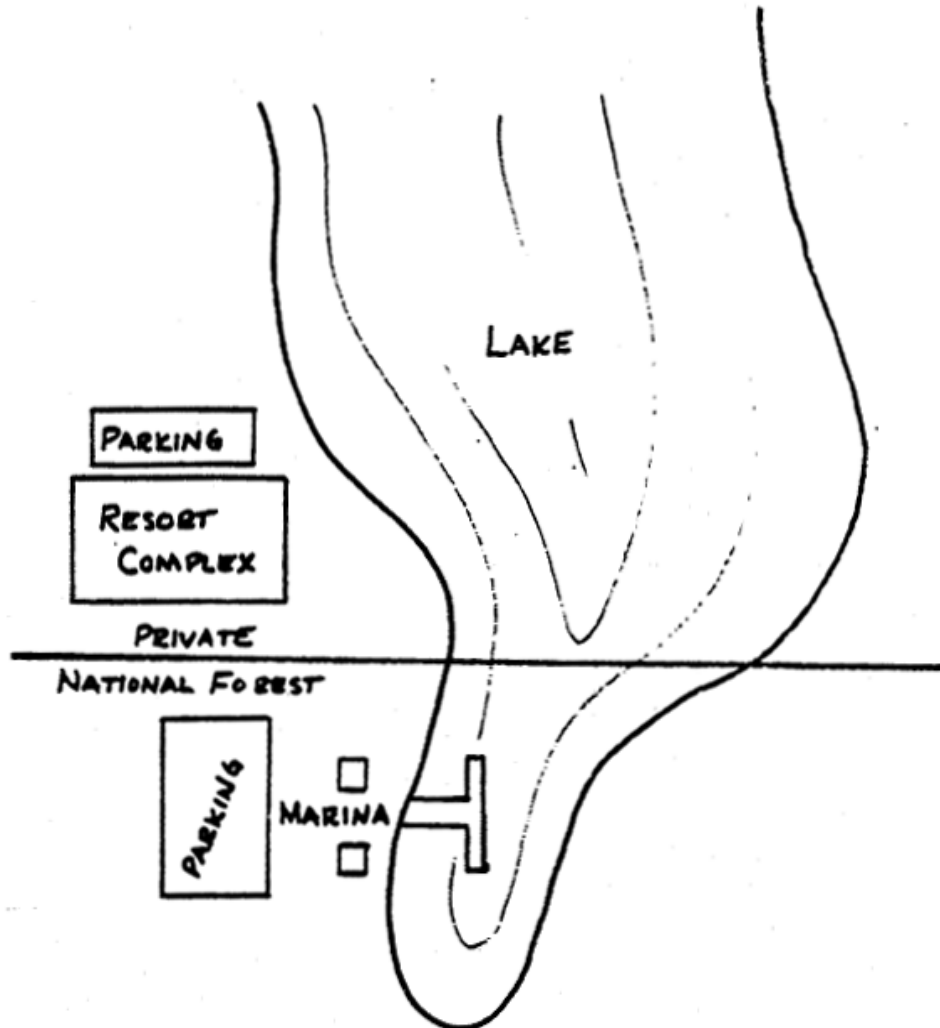
(2) Situation. A resort all on private land except for pasture, corrals, and sheds. Pack trips on National Forest.



Solution. Graduated rate system not to be used. Determine fee based on pasture use and appropriate amounts for outfitter-guide permit if one is involved.

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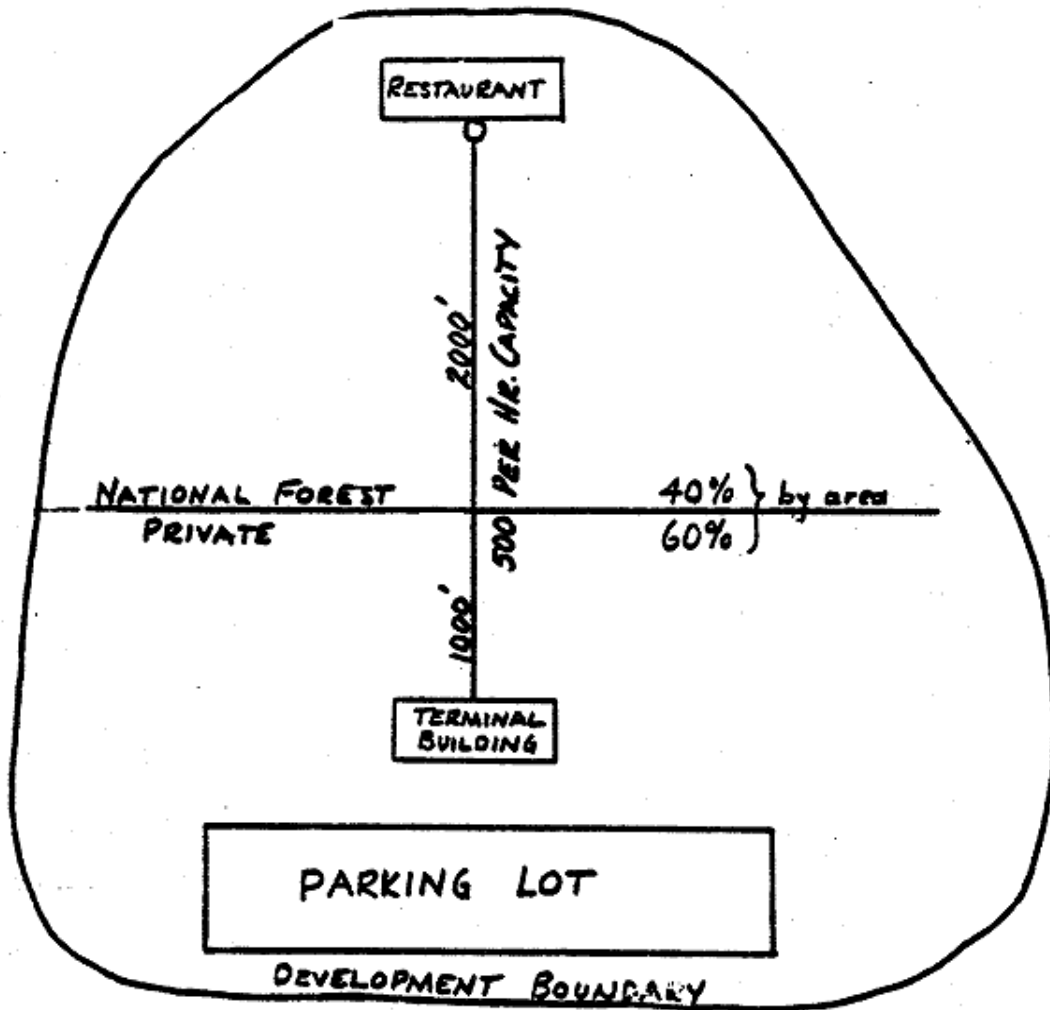
(3) Situation. Lodge and other main complex buildings on private land; marina, parking, and boats on National Forest. Marina open to public at all times. Marina sales records and GFA separately maintained.



Solution. Develop GFA from cost of marina, boats and parking and sales from marina as a single business; rental, other. Disregard investment and sales of resort.

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(4) Situation. A winter-sports area where the base facilities are on private land and most of the skiing is on the National Forest. The terminal building and all of the parking lot are on private land. Only one lift is in place. It is two thirds on Government land and the hilltop restaurant is on National Forest. The entire development is considered as being involved in generating sales on the lift.

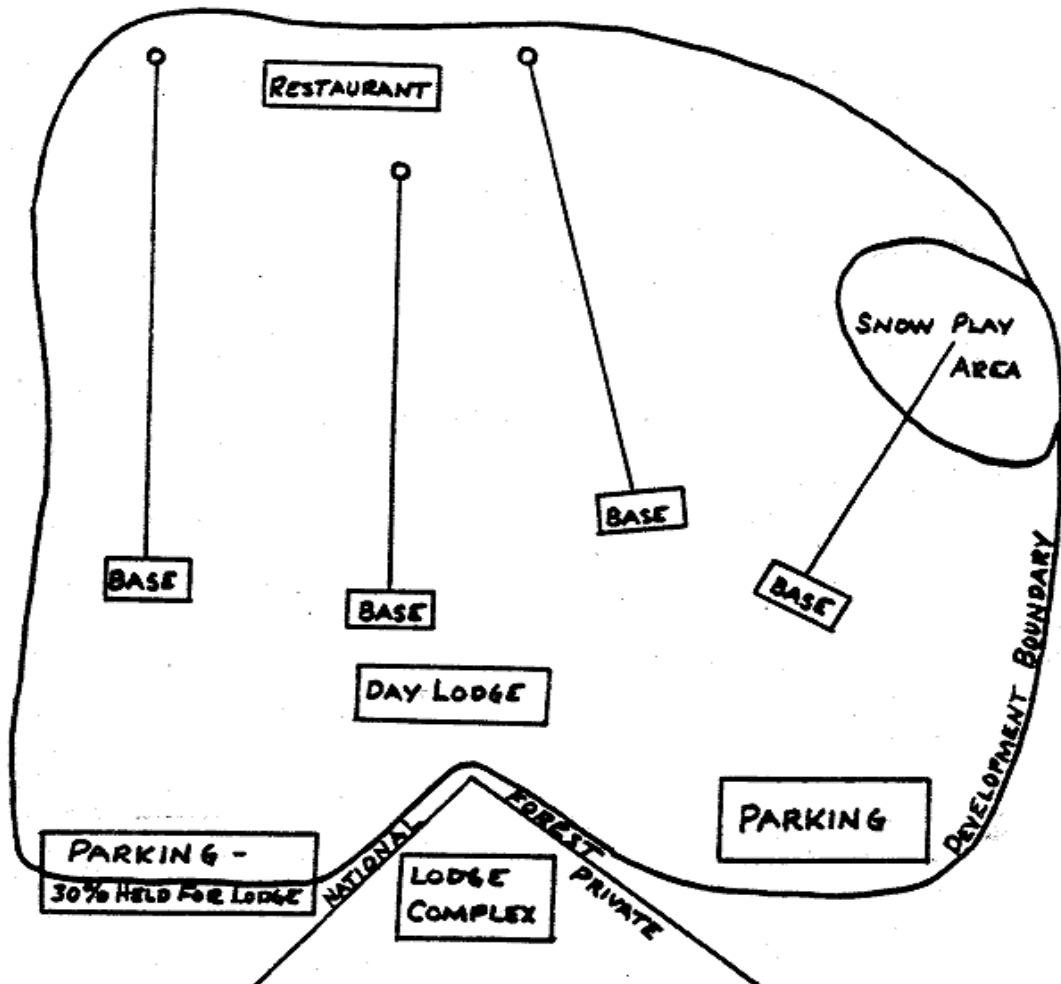


Solution. Because there is only one lift, proration is based on slope length only. GFA and sales of the lift, restaurant, terminal development, and parking area are prorated; two thirds to National Forest and one third to private.



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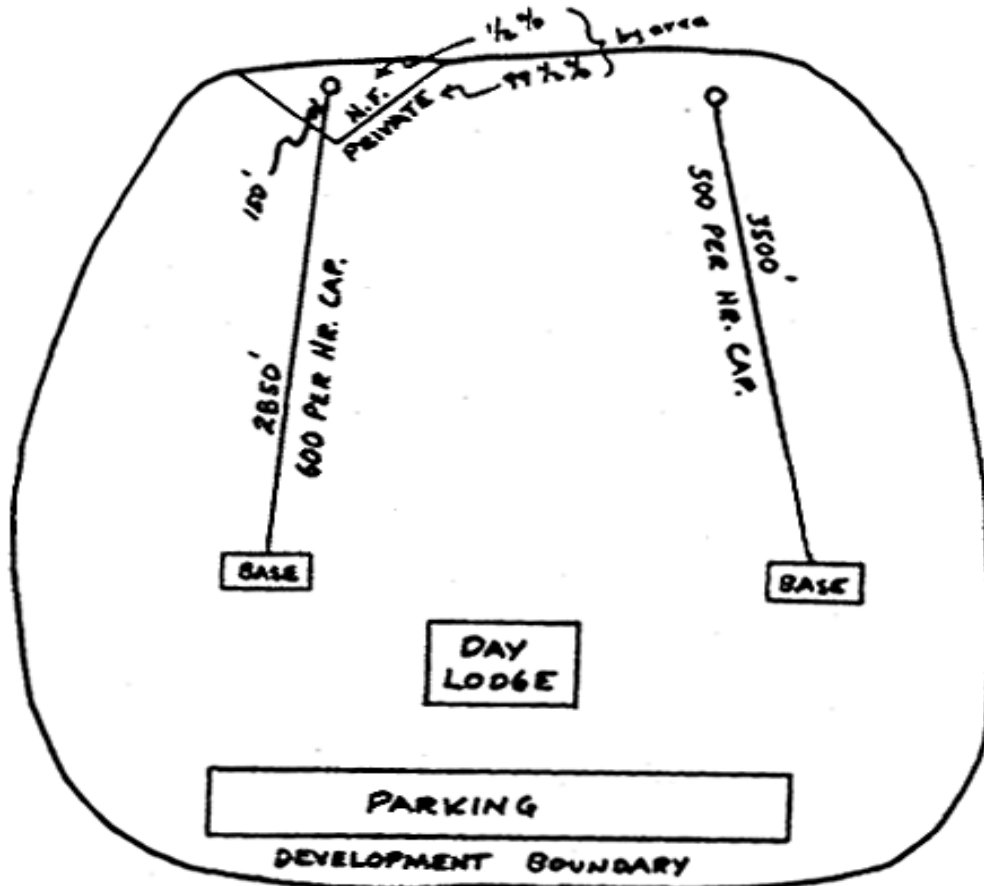
(6) Situation. All lifts and base facilities, parking lot, and service installations on National Forest; self-contained lodge complex on private land. Thirty percent of the parking lot is reserved for the lodge complex. The lodge, although owned by the permittee, is a part of a community complex of various ownerships.



Solution. For GFA and sales, everything except lodge complex and 30 percent of one parking lot qualifies for fee calculations.

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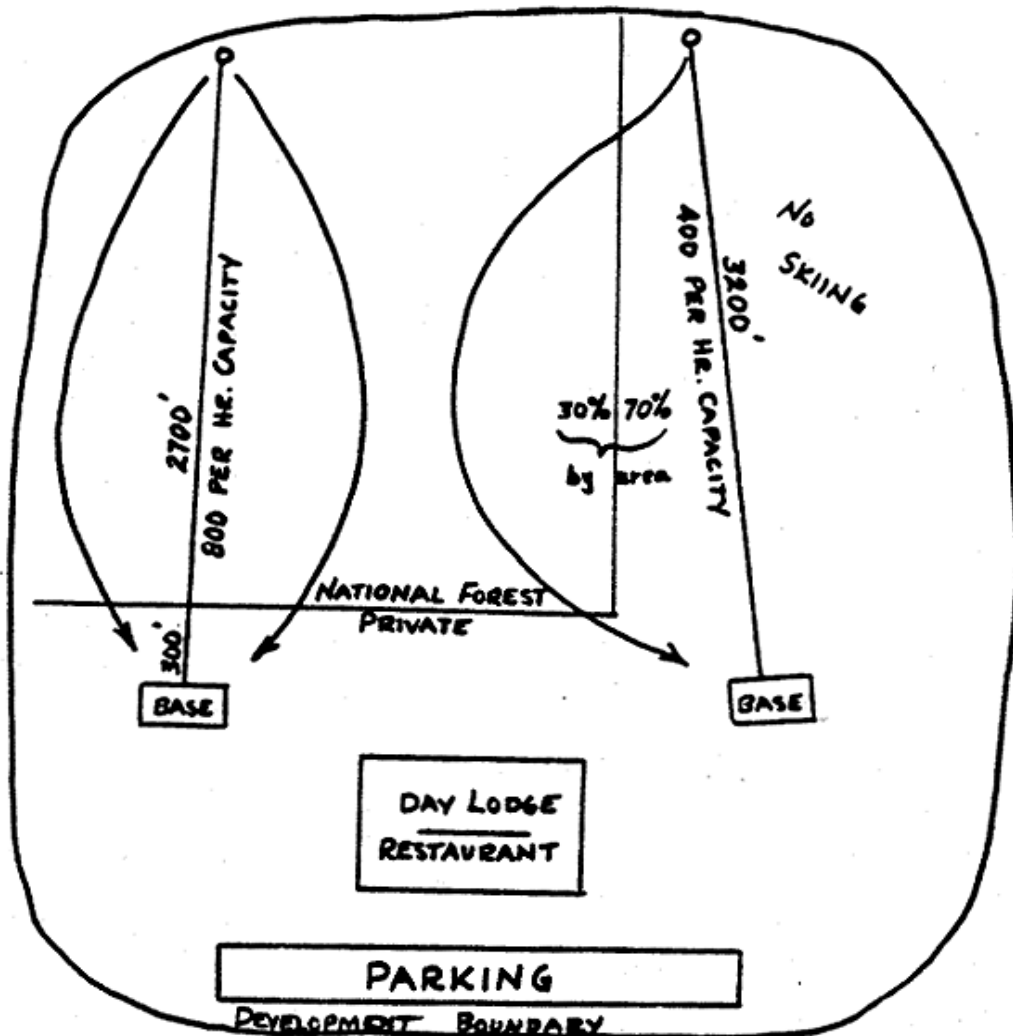
(7) Situation. Everyone on private land except 2 acres accommodating upper terminal of one lift. This is one-half length of one lift is on National Forest.



Solution. Since one lift is on both private land and National Forest, everything would be prorated on the basis of ownership using the slope transport feet method. In these circumstances the resulting fee is likely to be quite small. It may be appropriately set as a flat fee. This fee would be developed, using the principles of the graduated rate fee system. Because of the computations involved in using the system for such a small fee, the permittee might prefer a flat fee based on a land rental. If the Forest officer responsible is satisfied that a produce as much revenue for the Government as could reasonably be anticipated under the graduated rate fee system, this approach would be acceptable.

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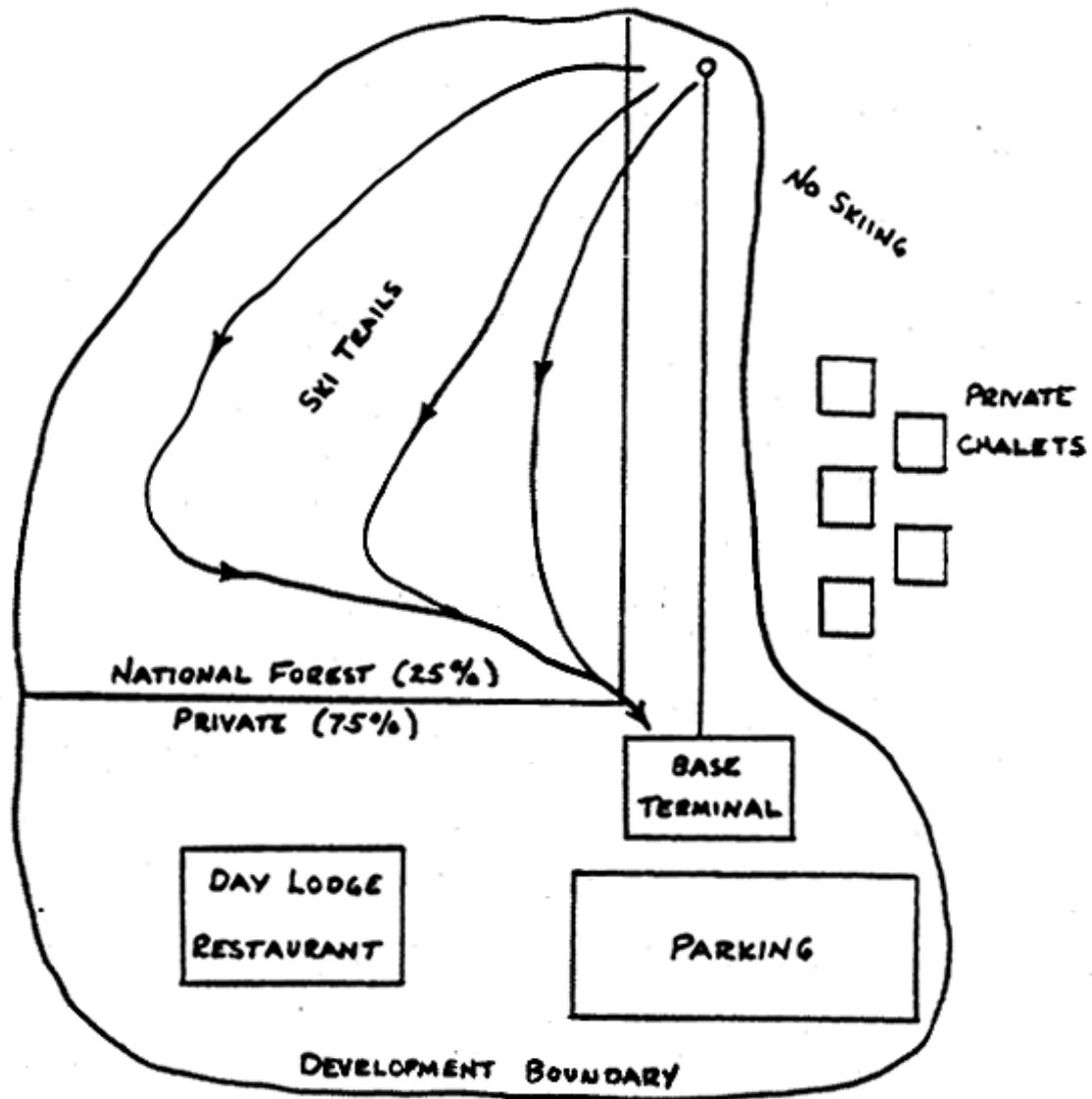
(8) Situation. Three hundred out of 3,000 feet of an 800-per-hour-capacity lift and all 3,200 feet of a 400-per-hour-capacity lift are on private land. The base terminal, which includes restaurant and ski shop, and parking lot are all on private land. Essentially all of the skiing is on National Forest land. All improvements are essential to operating this as ski area.



Solution. Using the slope transport feet method, it is determined that 59 percent of the business is attributed to the National Forest land. Therefore, in setting GFA and sales, prorate 59 percent of everything for fee calculation purposes.

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(9) Situation. All land of essentially the same fair market value. All improvements are on private land, but the skiing is on the National Forest. Chalet area is not under permittee control.

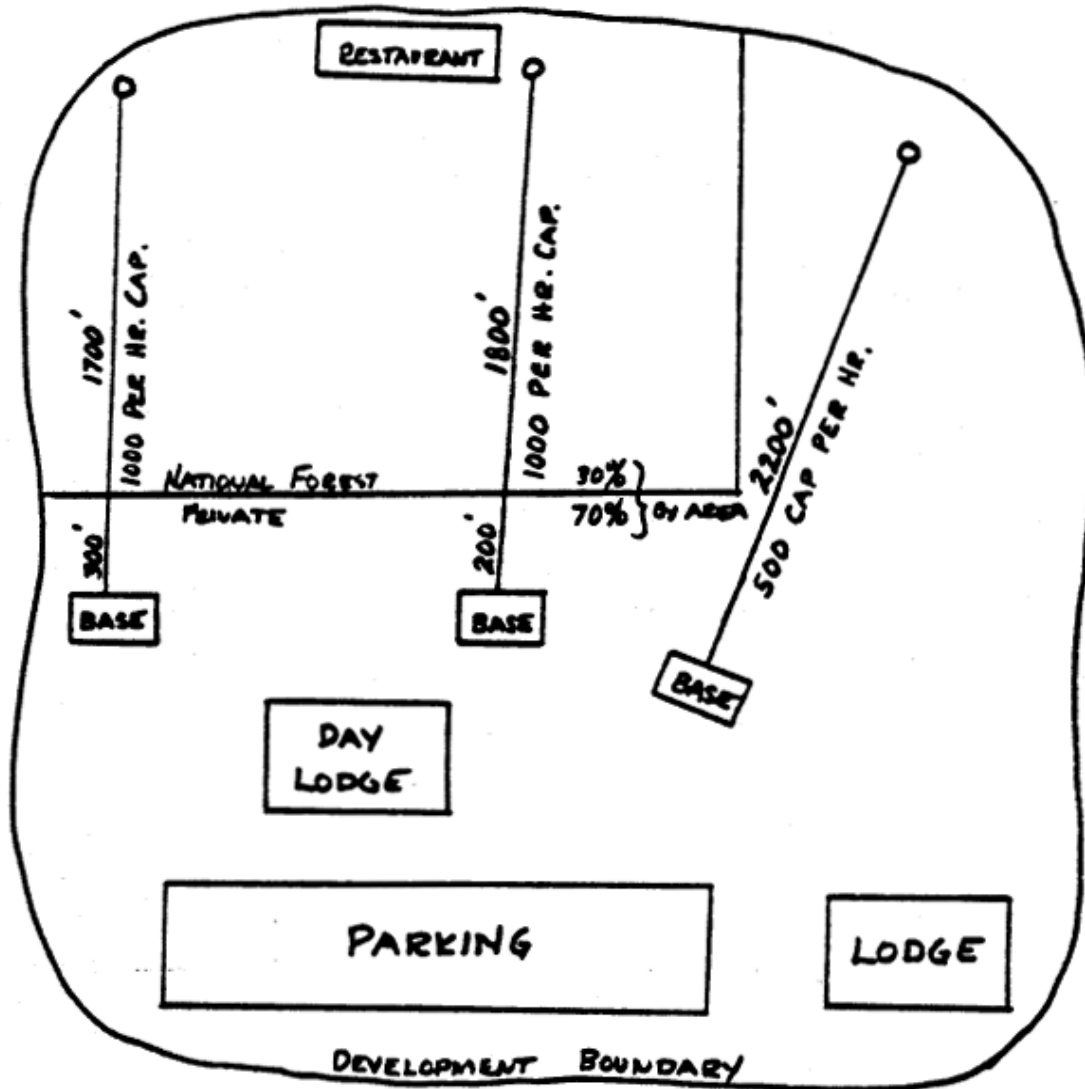


Solution. The approach is to prorate everything within the development boundary on the basis of the public land to the private land, percentage wise by area; that is, 25 percent and 75 percent.



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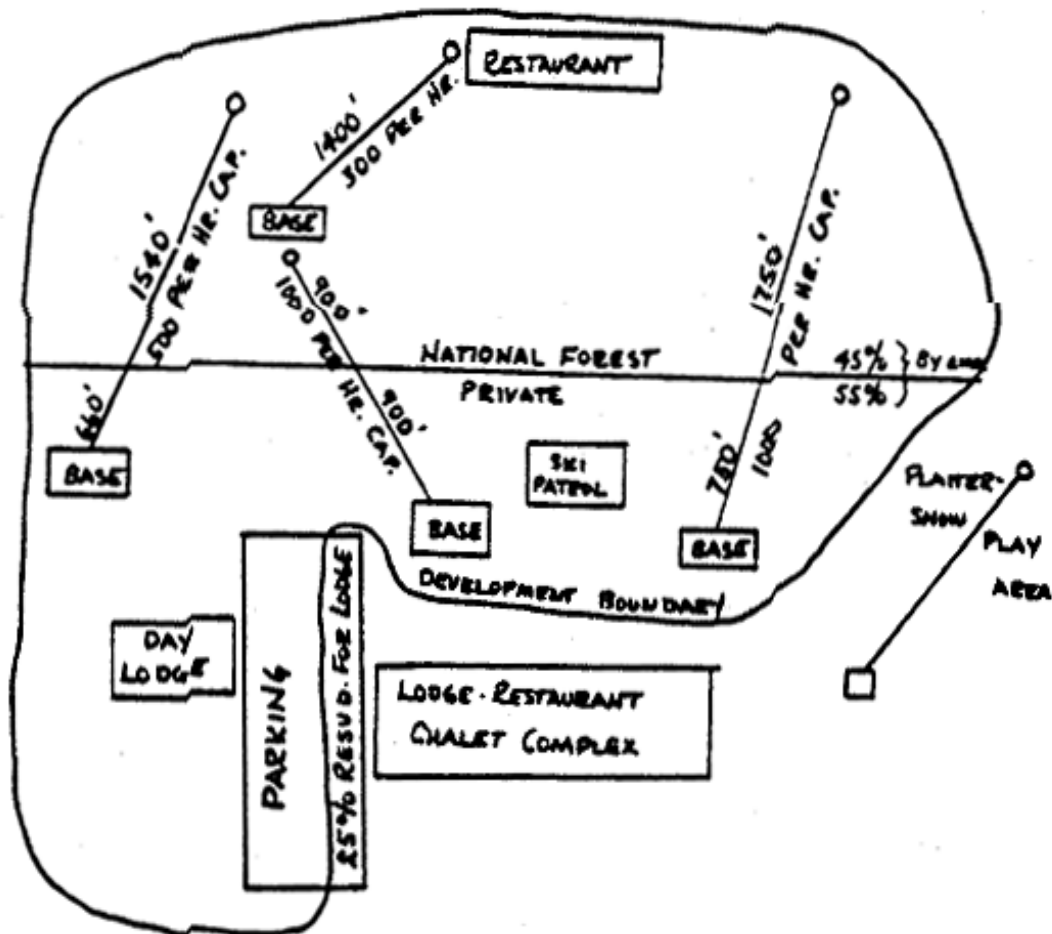
(10) Situation. A restaurant and part of two lifts are located on National Forest land. A third lift and all other facilities are located on private land. All lifts honor the same lift ticket. All developments including the lodge are essential.



Solution. Proration is made using the slope transport feet method. The resulting percentage factor (69 percent Forest Service in this case) is applied to GFA and sales for the entire operation.

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(11) Situation. One ticket covers three lifts of varying lengths and capacities common to both National Forests and private land, and one lift all on National Forest. One lift all on private land is covered by a separate ticket. Hilltop restaurant is 100 percent on National Forest; all other base facilities are on private land.



Situation. Snowplay area is not essential to joint operation nor is lodge, restaurant-chalet complex, or a proportionate share of parking. These are excluded from the development are. Sales and GFA from the other facilities are prorated, based on the percentages derived from the slope transport feet method. In this case, the operation is 66 percent attributed to National Forest land.

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## **2715.11d - Calculating and Applying Fee**

1. Procedures. See FSM 2715.14 for procedures when fees are less than \$3,500.

An objective of Forest Service permit administration is to place the payment of fees on as current a basis as possible, and to make it possible for the permittee to calculate the fee and submit payment without billings. To meet this objective, monthly or quarterly payments shall be required, except during seasonal shutdown. If fees are expected to exceed \$10,000 per year, monthly payments shall be required; if less than \$10,000, quarterly payments are authorized.

The procedure to be followed based on quarterly payments is described below. The same procedure can be applied to monthly payments.

A minimum fee (see the following paragraph 3), which is not subject to refund, shall be due in advance of the start of the payment year. Additional amounts, based on a tentative rate and the sales for the month or fiscal quarter, are payable promptly after the close of each month quarter. The rate provided shall be one which, when applied to sales, shall produce the expected fee based on the past experience of the permitted use. The final exact fee, based on actual sales, shall be determined by the Forest Service upon submission of the final sales report after the close of the permittees' operating year. Any necessary adjustments between the tentative fee and actual fee shall be made at that time.

The Forest officer administering the permit shall provide the permittee with the tentative fee rate for the next year during the fourth quarter of the current year. It shall be derived by following the fee calculation procedure using sales data to date plus anticipated sales for the remainder of the year to the point that a weighted average rate is produced. The weighted average rate is the tentative rate.

2. Basic Calculations Under System. The actual calculation of the fee involves a series of arithmetic steps which are not complicated, but which do have to be made in an orderly sequence. This is greatly facilitated by the use of the standard worksheet with instructions, Form FS-2700-19, Fee Calculation for Concession Permits. The basic steps involved are:

- a. Determine or update GFA. See FSM 2715.11c, item 3 for details, and, if appropriate, FSM 2715.11c, paragraph 6.
- b. Determine qualifying sales for fee calculation purposes. See FSM 2715.11c, paragraph 4 for details and, if appropriate, FSM 2715.11c, paragraph 6.
- c. Select break-even point from rate schedule. (On mixed businesses it is necessary to develop a composite break-even point. The worksheet makes this a simple arithmetic step.)

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d. Select rate base. (On mixed business, as with the break-even point, it is necessary to develop a weighted composite rate base and, as with the break-even point, the worksheet makes this a simple process.)

e. Calculate the basic fee:

(1) Multiply that part of sales below the break-even point by 50 percent of rate base.

(2) Multiply that part of sales between the break-even point and twice the break-even point by 150 percent of rate base.

(3) Multiply that part of sales above two times the break-even point by the balance of sales rate.

(4) Add the results of the three previous steps to produce the basic fee.

f. Calculate surcharge (if any).

Multiply basic fee by surcharge percentage.

g. Calculate commission fee.

Multiply commissions by weighted average fee (total basic fee divided by total sales) to produce fee on commissions.

h. Calculate franchise fee (if any). See FSM 2715.11c, paragraph 4 for details.

Multiply franchise receipts by separate franchise fee rate.

i. Determine total fee.

Add basic fee, surcharge, fee on commissions, and fee on franchise payments, to produce total fee for the permitted operation.

j. Determine balance due or credit.

Subtract payments to date from total fee. The result is the balance due or credit.

3. Minimum Fee. The minimum fee is developed by applying the lowest applicable rate to 40 percent of the appropriate break-even point. For example: A mixed business has gross fixed assets of \$70,000. Based on the business mix of the operation, the composite break-even point is calculated to be 62 percent of GFA (.62 x \$70,000) or \$43,400. Sales at 40 percent of this (.40 x \$43,400) would be \$17,360. Based on the sales and business mix of the operation, the fee rate applying to up to the break-even point is determined to be .97 percent. This rate applied to the sales of 40 percent of break-even ( $17,360 \times .0097$ ) yields a minimum fee of \$168.39.

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4. Sample Fee Calculation. On the pages that follow there are some examples of how fees are calculated under a variety of circumstances. The first illustrates the use of a tentative rate to calculate a tentative fee for part of a year's operation. The next two cover typical resort situations. The last four involve representative winter-sports operations.

Example 1. Shows permittee calculations of fees due after the first and second quarters of the year's operations using a tentative rate previously furnished. A simplified form such as the one shown can be used to facilitate fee calculation and payment of fees.

The tentative rate furnished the permittee is 1 percent. A minimum fee of \$150 has been paid. Sales for the period January 1 - March 31 were \$10,000, and for the period April 1 - June 30, \$12,000.

**Example 1a**

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**PERMITTEE PAYMENT CALCULATION FORM**

For the Period 1/1/- to 3/1/-

Tentative Rate <u>1%</u>	Sales to Date <u>\$10,000</u>	Total Fee to Date <u>\$100.00</u> (1)
Payments to Date (Minimum + other payments)		<u>\$150.00</u> (2)
Payment Due (Subtract entry (2) from (1))		<u>\$ 0</u> (3)
Balance in Account (Subtract entry (1) from (2))		<u>\$ 50.00</u> (4)

Send any Payment Due (3) Made Payable to:

Collection Officer--Forest Service, USDA, to:

Forest Supervisor, P.O. Box 195, Highland, Calif. 95009

**(SUBMIT COMPLETED FORM WHETHER OR NOT PAYMENT IS DUE)**

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**Example 1b**

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**PERMITTEE PAYMENT CALCULATION FORM**

For the Period 1/1/- to 6/30/-

Tentative Rate <u>1%</u>	Sales to Date <u>\$22,000</u>	Total Fee to Date <u>\$220.00</u> (1)
Payments to Date (Minimum + other payments)		<u>\$150.00</u> (2)
Payment Due (Subtract entry (2) from (1))		<u>\$ 70.00</u> (3)
Balance in Account (Subtract entry (1) from (2))		<u>\$ _____</u> (4)

Send any Payment Due (3) Made Payable to:

Collection Officer--Forest Service, USDA, to:

Forest Supervisor, P.O. Box 195, Highland, Calif. 95009

(SUBMIT COMPLETED FORM WHETHER OR NOT PAYMENT IS DUE)

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The instructions for use of Form FS-2700-19 are on the back of the form as follows:

- a. Fill out blocks A-E at top of form.
- b. From permittee's report of sales, determine dollar amount of sales for each kind of business and enter in column I.
- c. If the permit provides rates for a business other than those listed, enter the breakeven point in column III and fee rates in columns V and VII on "blank" lines.
- d. Determine the percentage that the sales for each kind of business is of total sales. Enter these percentages in columns II.
- e. Multiply column III by column II and enter the result in column IV without decimals. Show a total for the column at the bottom. Point off two places. This is the composite breakeven point. Round it off to the nearest whole percent, dropping any amount less the 0.5 percent, and enter it on line 1 under Rate.
- f. Multiply column V by column II and enter the products in column VI without decimals. Show a total for the column at the bottom. Point off four places. This is

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the composite rate base. Round it off to the nearest hundredth of a percent and enter it on line 2 under Rate.

g. Enter 50% of line 2 rate on line 3a under Rate and enter 150% of line 2 rate on line 3b under Rate.

h. Multiply the entry in block E by the percentage on line 1. If the result is greater than the entry in block D, enter the block D amount on line 3a under Sales. If the result is less than block D, enter the result on line 3a under Sales.

i. Subtract entry on line 3a under Sales from total sales block D. If the difference between line 3a entry and block D is equal to or less than line 3a, post the difference to line 3b under Sales. If the difference is greater than line 3a, post an amount equal to line 3a entry to line 3b. Post any balance of sales over line 3a and 3b total to line 3c under Sales. Total the results and post on line 4. Line 4 total sales must equal the block D entry.

j. If an entry is made under Sales on line 3c, multiply column VII by column II and enter the result in column VIII without decimals. Show a total for the column at the bottom. Point off four places. This is the composite balance of sales rate. Round it off to the nearest hundredth of a percent and enter it on line 3c under Rate.

k. Multiply line 3a Sales by line 3a Rate and post the result to line 3a, Fee. Follow the same procedure for lines 3b and 3c as appropriate. Post basic feet to line 4.

l. Divide line 4 Sales into line 4 Fee and post weighted average fee rate to line 5 under Rate.

m. If subcharge applies, enter basic fee and surcharge percentage on line 6. Multiply and enter surcharge on line 6 under Fee.

n. Post commissions and other income to line 7. Multiply by weighted average fee rate line 5. Post the result on line 7 under Fee.

o. Post franchise payment to line 8, multiply by percentage due the government. Post fee due on line 8 under Fee.

p. Add fees on lines 4, 6, 7, and 8 and post total to line 9 under Fee.

q. Enter minimum fee paid on line 10 under Fee.

r. On line 11, enter entry from line 9 or 10 whichever is larger.

s. On line 12, enter payments made to date including credit from previous year.

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t. On line 13, enter the difference between line 11 and 12 and strike out the inappropriate word.



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Example 2. Shows the calculation of the final fee when sales of a business did not go beyond the break-even point. At the end of 1967, GFA was established at \$37,000. Sales totaled only \$16,000; \$4,000 from groceries, \$4,800 from a service station, \$2,400 from off-sale beer, \$1,600 from general merchandise, and \$3,200 from boat and horse rentals. \$150 in fees has been paid to date. It is usually advantageous to use a flat fee for permits having annual fees less than \$3,500.

USDA - Forest Service <b>FEE CALCULATIONS FOR CONCESSION PERMITS</b>			A. PERMITTEE (Name and address):		B. LUR IDENTITY CODE 70-----		
C. PERIOD: 1/1/ to 12/31/--			D. FEE CALCULATION SALES: \$ 16,000		E. GROSS FIXED ASSETS (GFA): \$37,000,000		
SOURCE OF SALES	SALES FOR FEE CALCULATION		BREAK-EVEN POINT (SALES TO GFA)		RATE BASE		BALANCE OF SALES RATE
	Amounts	%		%	%		%
	I	II	III	IV	V	VI	VII
Grocery	\$4,000	25	70	1750	.75	1875	.85
Service, Cars	4,800	30	70	2100	1.30	3900	1.60
Merchandise	1,600	10	70	700	1.50	1500	1.80
Service, Liquor	2,400	15	60	900	1.80	2700	2.15
Rental & Service	3,200	20	30	600	4.50	9000	5.95
<b>TOTAL</b>	<b>\$16,000</b>	<b>100</b>		<b>6050</b>		<b>18975</b>	
ITEMS				RATES	SALES	FEE	
1. COMPOSITE BREAK-EVEN POINT				61			
2. COMPOSITE RATE BASE				1.90			
3. COMPUTATION OF BASIC FEE				.95	\$16,000	\$152.00	
a. On sales below break-even							
b. On sales from break-even to twice break-even				2.85			
c. On sales greater than twice break-even							
4. TOTALS (Sales and Basic Fee)					\$16,000	\$152.00	
5. WEIGHTED AVERAGE FEE RATE				.95			
6. SUBCHARGE (if any) \$ _____ x _____ = \$				(TOTAL BASIC FEE)	(SURCHARGE RATES)		
7. COMMISSIONS AND OTHER INCOME \$ _____ x _____ = \$				(COMMISSIONS)	(WEIGHTED AVG. FEE RATE)		
8. FRANCHISE PAYMENTS \$ _____ x _____ = \$				(FRANCHISE PAYMENTS)	(FRANCHISE RATE)		
9. FEE EARNED (G/T payments to be billed separately) ----->						\$152,00	
10. MINIMUM FEE PAID ----->						\$ 85,00	
11. TOTAL FEE DUE ----->						\$152,00	
12. PAYMENT TO DATE including credits ----->						\$150,00	
13. BALANCE DUE/ <del>CREDIT</del> ----->						\$ 2.00	
(Strike out one)							
Prepared by:		Date		Checked by		Date	
(See Reverse for Instructions)						2700-19 (2/71)	

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Example 3. A business has sales in excess of its established GFA and in this case involves the use of the third rate. A resort with GFA of \$70,000 had sales of \$100,000; \$25,000 from groceries, \$10,000 from food service, \$25,000 from general merchandise, \$10,000 from off-sale beer, \$15,000 from rental of furnished overnight cabins without maid service, and \$15,000 from rental of trailer spaces, boats, and horses. There also was \$1,250 of commissions and other income, and \$2,000 from a franchise payment. Payments have been made currently and this calculation is the yearend reconciliation.

USDA - Forest Service <b>FEE CALCULATIONS FOR CONCESSION PERMITS</b>			A. PERMITTEE (Name and address):			B. LUR IDENTITY CODE 70-----		
C. PERIOD: 1/1/ to 12/31/--			D. FEE CALCULATION SALES: \$ 100,000			E. GROSS FIXED ASSETS (GFA): \$70,000		
SOURCE OF SALES	SALES FOR FEE CALCULATION		BREAK-EVEN POINT (SALES TO GFA)		RATE BASE		BALANCE OF SALES RATE	
	Amounts	%		%	%		%	
	I	II	III	IV	V	VI	VII	VIII
Grocery	\$25,000	25	70	1750	.75	1875	.85	2125
Service, Food	10,000	10	70	700	1.25	1250	1.50	1500
Merchandise	25,000	25	70	1750	1.50	3750	1.80	4500
Service, Liquor	10,000	10	60	600	1.80	1800	2.15	2150
Rental & Service	30,000	30	30	900	4.50	13500	5.95	17850
<b>TOTAL</b>	<b>\$100,000</b>	<b>100</b>		<b>5700</b>		<b>22175</b>		<b>28125</b>
ITEMS				RATES	SALES		FEE	
1. COMPOSITE BREAK-EVEN POINT				57				
2. COMPOSITE RATE BASE				2.22				
3. COMPUTATION OF BASIC FEE				1.11	\$ 39,900	\$ 442.89		
a. On sales below break-even								
b. On sales from break-even to twice break-even				3.33	39,900	1328.67		
c. On sales greater than twice break-even				2.81	20,200	567.62		
4. TOTALS (Sales and Basic Fee)					\$100,000	\$2339.18		
5. WEIGHTED AVERAGE FEE RATE				2.34				
6. SUBCHARGE (if any) \$ _____ x _____ = \$				(TOTAL BASIC FEE)	(SURCHARGE RATES)			
7. COMMISSIONS AND OTHER INCOME \$ 1250.00 x 2.34 = \$ 29.25				(COMMISSIONS)	(WEIGHTED AVG. FEE RATE)			
8. FRANCHISE PAYMENTS \$ 2000.00 x .50 = \$1000.00				(FRANCHISE PAYMENTS)	(FRANCHISE RATE)			
9. FEE EARNED (G/T payments to be billed separately) ----->							\$3368.43	
10. MINIMUM FEE PAID ----->							\$ 177.00	
11. TOTAL FEE DUE ----->							\$3368.43	
12. PAYMENT TO DATE including credits ----->							\$3300.00	
13. BALANCE DUE/ <del>CREDIT</del> ----->							\$ 68.43	
(Strike out one)								
Prepared by:			Date		Checked by		Date	
(See Reverse for Instructions)								
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Example 4. This shows how a winter-sports fee would be calculated where GFA is fixed at \$1,000,000 and sales were equal to \$870,000. \$174,000 from food service, \$130,500 from room rentals with maid service, \$43,500 from ski equipment rental, and \$522,000 from lift tickets and ski school lessons. A surcharge of 5 percent resulting from competitive bidding is applied.

Payments to date total \$24,550.

USDA - Forest Service <b>FEE CALCULATIONS FOR CONCESSION PERMITS</b>			A. PERMITTEE (Name and address):			B. LUR IDENTITY CODE 70-----		
C. PERIOD: 6/1/69 to 5/31/70			D. FEE CALCULATION SALES: \$ 870,000			E. GROSS FIXED ASSETS (GFA): \$1,000,000		
SOURCE OF SALES	SALES FOR FEE CALCULATION		BREAK-EVEN POINT (SALES TO GFA)		RATE BASE		BALANCE OF SALES RATE	
	Amounts	%		%	%		%	
	I	II	III	IV	V	VI	VII	VIII
Service, Food	\$174,000	20	70	1400	1.25	2500	1.50	3000
Service, Rooms	130,500	15	40	600	4.00	6000	5.30	7950
Rentals	43,500	5	30	150	4.50	2250	5.95	2975
Lifts, Tows &								
Ski School	522,000	60	20	1200	2.00	12000	5.00	30000
<b>TOTAL</b>	<b>\$870,000</b>	<b>100</b>		<b>3350</b>		<b>22750</b>		<b>43925</b>
ITEMS				RATES	SALES		FEE	
1. COMPOSITE BREAK-EVEN POINT				34				
2. COMPOSITE RATE BASE				2.28				
3. COMPUTATION OF BASIC FEE				1.14	\$340,000	\$ 3876.00		
a. On sales below break-even								
b. On sales from break-even to twice break-even				3.42	340,000	11628.00		
c. On sales greater than twice break-even				4.39	190,000	8341.00		
4. TOTALS (Sales and Basic Fee)					\$870,000	\$23,845.00		
5. WEIGHTED AVERAGE FEE RATE				2.74				
6. SUBCHARGE (if any)				\$ 23,845.00	x .05	=	\$ 1192.25	
				(TOTAL BASIC FEE)	(SURCHARGE RATES)			
7. COMMISSIONS AND OTHER INCOME				\$	x	=	\$	
				(COMMISSIONS)	(WEIGHTED AVG. FEE RATE)			
8. FRANCHISE PAYMENTS				\$	x	=	\$	
				(FRANCHISE PAYMENTS)	(FRANCHISE RATE)			
9. FEE EARNED (G/T payments to be billed separately) ----->							\$25,037.25	
10. MINIMUM FEE PAID ----->							\$ 1,550.00	
11. TOTAL FEE DUE ----->							\$25,037.25	
12. PAYMENT TO DATE including credits ----->							\$24,550.00	
13. BALANCE DUE/ <del>CREDIT</del> ----->							\$ 487.25	
(Strike out one)								
Prepared by:			Date		Checked by		Date	
(See Reverse for Instructions)							2700-19 (2/71)	

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Example 5. This shows what the fee would be for a succeeding year when sales were, because of a bad season, reduced to \$370,000 and GFA is still fixed at \$1,000,000. The surcharge is still in effect.

Payments of \$6,000 have been made.

USDA - Forest Service <b>FEE CALCULATIONS FOR CONCESSION PERMITS</b>			A. PERMITTEE (Name and address):		B. LUR IDENTITY CODE 70-----			
C. PERIOD: 6/1/71 to 5/31/72			D. FEE CALCULATION SALES: \$ 370,000		E. GROSS FIXED ASSETS (GFA): \$1,000,000			
SOURCE OF SALES	SALES FOR FEE CALCULATION		BREAK-EVEN POINT (SALES TO GFA)		RATE BASE		BALANCE OF SALES RATE	
	Amounts	%		%	%		%	
	I	II	III	IV	V	VI	VII	VIII
Service, Food	\$ 66,000	18	70	1260	1.25	2250		
Service, Rooms	55,500	15	40	600	4.00	6000		
Rentals	22,200	6	30	180	4.50	2700		
Lifts, Tows &								
Ski School	225,700	61	20	1220	2.00	12200		
<b>TOTAL</b>	<b>\$370,000</b>	<b>100</b>		<b>3260</b>		<b>23150</b>		
ITEMS				RATES	SALES		FEE	
1. COMPOSITE BREAK-EVEN POINT				33				
2. COMPOSITE RATE BASE				2.32				
3. COMPUTATION OF BASIC FEE				1.16	\$330,000	\$ 3828.00		
a. On sales below break-even								
b. On sales from break-even to twice break-even				3.48	40,000	1392.00		
c. On sales greater than twice break-even								
4. TOTALS (Sales and Basic Fee)					\$370,000	\$ 5220.00		
5. WEIGHTED AVERAGE FEE RATE				1.41				
6. SUBCHARGE (if any)				$\frac{\$ 5220.00}{(\text{TOTAL BASIC FEE})} \times \frac{.05}{(\text{SURCHARGE RATES})} =$		\$ 261.00		
7. COMMISSIONS AND OTHER INCOME				$\frac{\$}{(\text{COMMISSIONS})} \times \frac{(\text{WEIGHTED AVG. FEE RATE})}{(\text{WEIGHTED AVG. FEE RATE})} =$		\$		
8. FRANCHISE PAYMENTS				$\frac{\$}{(\text{FRANCHISE PAYMENTS})} \times \frac{(\text{FRANCHISE RATE})}{(\text{FRANCHISE RATE})} =$		\$		
9. FEE EARNED (G/T payments to be billed separately) ----->						\$ 5481.00		
10. MINIMUM FEE PAID ----->						\$ 1520.00		
11. TOTAL FEE DUE ----->						\$ 5481.00		
12. PAYMENT TO DATE including credits ----->						\$ 6000.00		
13. <del>BALANCE DUE</del> /CREDIT ----->						\$ 519.00		
(Strike out one)								
Prepared by:			Date	Checked by			Date	
(See Reverse for Instructions)							2700-19 (2/71)	



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Example 7. This shows a fee readjustment calculation involving a flat fee which must be reviewed at 5-year intervals. The average annual sales figure is based on the average of the past 5 years; total sales for 1965-69 are \$150,000 or \$30,000 a year. The GFA in 1970 is \$60,000 and there are no plans to modify it during the ensuing 5 years for which the flat fee being developed will apply.

USDA - Forest Service <b>FEE CALCULATIONS FOR CONCESSION PERMITS</b>			A. PERMITTEE (Name and address):			B. LUR IDENTITY CODE 70-----		
C. PERIOD: 1965 - 1969			D. FEE CALCULATION SALES: \$ 30,000 (5 year Average)			E. GROSS FIXED ASSETS (GFA): \$ 60,000		
SOURCE OF SALES	SALES FOR FEE CALCULATION		BREAK-EVEN POINT (SALES TO GFA)		RATE BASE		BALANCE OF SALES RATE	
	Amounts	%		%	%		%	
	I	II	III	IV	V	VI	VII	VIII
Service, Food	\$ 4,500	15	70	1050	1.25	1875	1.50	2250
Rentals	1,500	5	30	150	4.50	2250	5.95	2975
Lifts, Tows & Ski School	24,000	80	20	1600	2.00	1600	5.00	40000
<b>TOTAL</b>	<b>\$ 30,000</b>	<b>100</b>		<b>2800</b>		<b>20125</b>		<b>45225</b>
ITEMS				RATES	SALES		FEE	
1. COMPOSITE BREAK-EVEN POINT				28				
2. COMPOSITE RATE BASE				2.01				
3. COMPUTATION OF BASIC FEE				1.00	14,800	\$ 148.00		
a. On sales below break-even								
b. On sales from break-even to twice break-even				3.01	14,800	445.48		
c. On sales greater than twice break-even				4.52	400	18.08		
4. TOTALS (Sales and Basic Fee)					30,000	\$ 611.56		
5. WEIGHTED AVERAGE FEE RATE								
6. SUBCHARGE (if any) \$ _____ x _____ = \$								
				(TOTAL BASIC FEE)	(SURCHARGE RATES)			
7. COMMISSIONS AND OTHER INCOME \$ _____ x _____ = \$								
				(COMMISSIONS)	(WEIGHTED AVG. FEE RATE)			
8. FRANCHISE PAYMENTS \$ _____ x _____ = \$								
				(FRANCHISE PAYMENTS)	(FRANCHISE RATE)			
9. FEE EARNED (G/T payments to be billed separately) ----->						\$		
10. MINIMUM FEE PAID ----->						\$		
11. TOTAL FEE DUE ----->						\$ 610.00		
12. PAYMENT TO DATE including credits ----->						\$		
13. BALANCE DUE/CREDIT ----->						\$		
(Strike out one)								
Prepared by:			Date	Checked by			Date	
(See Reverse for Instructions)							2700-19 (2/71)	

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### **2715.11e - Administering Graduated Rate Fee System**

1. Accounting Records. While all National Forest permits for concession special use operations provide that the permittee must keep accounting records satisfactory to the Forest Service, it should be clear that the Forest Service interest in the records is based solely upon the needs for the information necessary to compute equitable fees. Permittees may have compelling reasons to keep their records in a variety of ways to serve a range of different purposes. This is acceptable as long as they provide the kind of information, in the detail necessary, to meet Forest Service requirements, and are maintained in accordance with generally accepted accounting principles. Records which can be verified and provide the kind of information requested on a Forest Service annual operating statement are satisfactory. The Forest Service shall assist permittees in developing such systems if no other assistance is available to them. All records and fee calculations shall be certified as true. Requirements for such records and certification shall be made a condition of each permit at the first opportunity.

If records are not maintained to show sales volumes for each kind of business, there is no alternative but to credit sales to the kind of business which produces the highest return to the Government. This assignment of sales shall have to continue until satisfactory records are developed and maintained.

The selection of a method of cost accounting for improvements (as capitalized or expensed items) is a matter for permittee determination. Forest officers determining GFA should not be influenced by such decisions in making GFA determinations.

2. Maintaining System, Future Review. The graduated rate fee system shall be kept current. It shall be under continuous review. Annual financial reports by the individual permittees shall be accumulated and retained in the Forest Supervisor's case file to provide a backlog of data which can be analyzed in a manner similar to that used in the study and development of the fee system. The objective of this review is to maintain break-even points and rate schedules that are equitable to both the permittee and the Government.

3. Valuing Gross Fixed Assets. The value of gross fixed assets (GFA) must be the cost of each qualifying asset as reflected in the financial statements of the current holder. This is the same amount as shown on the holder's fixed asset depreciation schedule which supports the general ledger prepared in accordance with generally accepted accounting principles (GAAP) (FSH 6509.18, sec. 05 and 07). Include in GFA, when identified by the holder and approved by the authorized officer, costs which are expensed by the holder as payment to utility companies for constructing and installing utilities to the area to the extent they are necessary for the generation of sales. Costs for user surcharge or demand rates are not included as GFA.

If fixed assets have not been assigned a value by the holder at the time a permit is issued, the value for GFA must be determined by the holder and provided to the authorized officer no later than the end of the new holder's first financial reporting period.

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4. Revaluing GFA. Revalue GFA when events result in a change or restatement of fixed assets on the holder's official accounting records, prepared in accordance with GAAP. Examples of events that may cause the holder to restate the value of fixed assets include, but are not limited to:

- a. Sale of assets or common stock, which results in a change in ownership, or controlling interest;
- b. Mergers or other business combinations;
- c. Leveraged buy outs, and acquisitions; or
- d. Other events, either voluntary or involuntary, which trigger a revaluation of capitalized assets associated with the authorized use.

5. Audits. When the holder reports a change in the value of assets due to a restatement of the value of those assets, an audit may be necessary to validate the new GFA. Notify the Fiscal Officer of this change, so that a decision can be made on whether to conduct an audit in advance of the next scheduled audit (FSH 1409.15). Any adjustment in fees shall be retroactive to the time the change in asset value occurred.

6. Correcting Errors. Correction of errors includes but is not limited to any action necessary to establish the cost of gross fixed assets to the current holder, sales, slope transport feet calculation, or other data required to accurately assess and calculate fees. For fee calculation purposes, error includes but is not limited to:

- a. Misreporting or misrepresentation of amounts;
- b. Arithmetic mistakes;
- c. Typographical mistakes; and
- d. Variation from GAAP, when such variations are inconsistent with the terms and conditions of the authorization.

Correction of errors shall be made retroactively to the date the error was made or to the previous audit period, whichever is more recent; adjust past fees accordingly. Changes effected by agency policy, including definition of assets included in GFA, apply from the date the policy takes effect, not retroactively.



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### **2715.12 - Fees Based on Linear Right-of-Way Fee Schedule**

Direction for use of the linear right-of-way fee schedule is found in FSH 2709.11, section 36.4.

### **2715.13 - Granger-Thye Permit Fees**

Maintenance and reconditioning of Government-owned improvements may be required and credited as part or all of the total fee. The cash fee paid to the Government represents the full fee for the use reduced by the amount that the permittee is required to spend in performing specified maintenance, which would ordinarily be performed by a landlord. Landlord responsibility is normally considered to include the building exterior as well as major replacements involving structural planning. It would include such items as roof, gutters, downspouts, water supply, sewer systems, and driveways. The fee may not be reduced by ordinary or day-to-day maintenance, which would normally be performed by a tenant. Tenant responsibility would include such items as interior decorating, broken windows, minor structural repairs, and replacement of worn fittings and fixtures. Reconditioning is defined as the restoring of a facility to its original condition. It is not intended that reconditioning improve a facility beyond its original state unless the improvement can be accomplished at a cost no greater than the cost of restoration to original condition. Improvements beyond this may be done at the permittee's own expense without credit, or appropriated funds may be used.

The specific items of maintenance to be done and credited as a part of the fee must be agreed to in writing by the Forest Service and the permittee for each year. Cost allowances for each job are established in this statement to determine the credit allowed for such maintenance against the fee charged for the permit. Maintenance may be considered as the full fee in those special instances where Civilian Conservation Centers are used for social programs similar to those, which originally created the need for the camp without a listing of specific jobs.

In such instances the following statement shall be used preceding the "Maintenance of Government Improvements" clause in FSH 2709.11, chapter 50, clause D-16.

**Maintenance performed according to the following clause is the full consideration for this use.**

Maintenance may be accomplished by the permittee or by the Forest Service under cooperative agreement. See FSM 2711.3 for further information in regard to permits issued under authority of the Granger-Thye Act.

The terms of a Granger-Thye permit must clearly state the total fee being charged even though all or part of it may be covered through maintenance or reconditioning performed or financed by the permittee. This fee which represents the full value of the use consists of a fee for land use plus a fee for the use of Government-owned improvements.

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The land use fee is determined in accordance with FSH 2709.11, chapter 30 or as indicated for a particular use in FSM 2720. An appropriate fee for the use of Government-owned improvements is considered to be 6 percent of the value of the improvements.

The value of annual maintenance and reconditioning shall not be a fixed amount in the permit. The amount actually collected would be the total fee less the planned expenditures for the billing period. Under this procedure the annual plan is prepared and agreed upon before preparation of the billing. If a planned job is not completed, the value of the incompleting maintenance shall be added to the next annual billing.

Under special conditions where the estimated cost of major maintenance items exceed the determined fee, the permittee may deposit funds in a special account for these high-cost jobs, provided the work is prescribed and approved in the long-range plan.

**2715.14 - Concession Fees**

1. New Uses:

- a. Estimated Fee Under \$500. When the fee is expected to be less than \$500, use a flat fee based on the issuing officer's best estimate of the value of the use. This estimate may be related to a percentage of land value or what the fee would be if the graduated rate system (GRFS; FSM 2715.11) were applied to sales either actual or estimated.
- b. Estimated Fee From \$500 to \$3,500. When a fee is expected to be in this range, either a flat fee or a graduated fee may be established through application of GRFS to estimated sales based, if possible, on the previous 3-year sales history.
- c. Estimated Fee Over \$3,500. When a fee is expected to exceed \$3,500, use GRFS, except in rare instances when the fee is based directly on land value (FSH 2709.11, ch. 30).
- d. Existing Uses. In all cases where it is possible to do so, modify existing permits to provide for the use of GRFS. It cannot be applied to permits where readjustment is precluded or limited by terms of the permit without a mutually agreed modification of the permit.

Permits cannot be modified to the disadvantage of the Government. However, advantage need not be measured in terms of fee amount alone. Some permittees may request or be willing to accept GRFS as part of a permit revision, which incorporates modifications in the public interest as well as those advantageous to the permittee.

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## **2716 - ADMINISTRATION OF PERMITS**

Forest officers have a continuing responsibility to properly administer special use permits. Supervision and control of a special use begins with the first discussion with the applicant. This is the Service's opportunity to inform the applicants of their responsibilities, as a tenant of the Government and to inform them that full compliance with terms of the permit will be expected. Furthermore, they must be informed and understand that the Forest Service, through periodic inspections will ascertain whether the permittees are meeting their responsibilities.

### **2716.1 - Change in Ownership**

When private improvements change ownership it is Forest Service policy to issue a new special use authorization. Upon application and presentation of proof of ownership, a new authorization may be issued to the new owner, provided continuation of the use is desirable. The new authorization shall contain any new conditions or stipulations, which circumstances may warrant.

The sale and transfer of improvements, particularly when recreation residences are involved, frequently result in administrative problems, as the new owners are not always aware that the permit terminates with transfer of ownership of the improvements nor do they always realize that the new permit may include requirements in addition to those in the old permit.

Legal title to improvements does not pass to the purchaser under the terms of some sales contracts until all conditions of the contract have been satisfied. This may take years. In these cases the purchaser is recognized as the "effective" owner by virtue of the contract and the purchaser's possession of the improvements.

The Forest Service does not require its permittees to obtain its consent to the sale of improvements. However, there is no obligation on the part of the Service to issue a new permit to the persons acquiring the improvements.

### **2716.11 - Relinquishment**

Require the existing and prospective permit holder to submit a relinquishment form to the authorized officer when there is a proposed change in ownership of private investments on National Forest System lands. Form FS-2700-3a, Holder Initiated Revocation of Existing Authorization, Request for a Special Use Permit, or Term Special Use permit, is the appropriate instrument to use to document ownership changes of private investments; however, any written instrument is acceptable that includes:

1. An acknowledgment that the present permittee no longer claims any right to the improvements and wants the permit to terminate.
2. An authorization to credit unused fees paid to the new applicant.
3. An application by the new owner for a special use permit.

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### **2716.12 - Review Before Reissuance**

Before approving the issuance of a new special use permit for an established use, an analysis of the conditions of the use shall be made to determine whether changes in permit conditions are needed. Every opportunity should be taken to correct deficiencies and bring older facilities and permit areas up to standard. New requirements must be reasonable and defensible. To ensure an orderly and planned accomplishment of objectives a schedule of completion dates shall be made a part of the permit.

Purchasers of permitted concession operations must meet the same applicant qualifications as applicants for new concessions (FSM 2712.1).

When an existing use is no longer desirable, or when the area is needed for uses of higher priority, the permittee should be given written notice that a request for a new permit will not be approved if the improvements are transferred. This notice will allow the permittee to make the most satisfactory arrangements possible, and is to be given at the earliest possible date. At least 10 years notice shall be given in recreation-residence termination cases initiated by the Forest Service.

### **2716.13 - Fee Balances and New Minimum Fees**

When noncommercial improvements are sold, any fee balances that remain may be credited to a new permittee if arrangements such as the use of the relinquishment form have been made.

When commercial improvements are sold, the following policies apply to the disposition of fee balances and establishment of a new minimum fee:

1. Flat fee balances may be credited to the new permittee as provided above. Ordinarily, the old fee rate should apply through the remainder of the previously established fee year. If a new fee year is to be established and/or a different type of fee is to be applied, common sense and the guidelines below should be used where applicable to determine the logical and fair handling of any credits and/or interim fees.

2. If fees are established on a percentage basis, any balance of the minimum fee that remains not exceeding the pro rata balance may be credited to the new permittee. For example: the seller's permit year is July 1- June 30. The sale takes place on November 30. The minimum fee for the year was \$120. The pro rata minimum for the July 1 - November 30 period would be 5/12 of \$120 or \$50. If the fee based on sales for the period July 1 to November 30 is \$50 or less, the \$70 balance of the minimum would be credited to the purchaser. If, however, the fee based on sales was \$65 for the period of July 1 to November 30, the \$15 over the \$50 minimum would be subtracted from the \$70. This would leave a balance of only \$55.

If the purchaser selects a fiscal year different than that of the seller, the minimum fee and fee calculations based on sales for the interim period would be handled as follows:

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a. The minimum fee would be a pro rata portion of that due for a full 12-month period.

b. The fee based on sales would be:

(1) Estimated if expected to be less than \$250 and billed in advance in lieu of the minimum fee and fees based on sales; it should not be subject to refund, or

(2) Calculated and paid monthly or quarterly (as provided in the permit).

If the graduated rate schedule is used, the break-even points should be adjusted to compensate for the shortened fee year. The adjustment shall be made based on the percentage of the previous fiscal year's business that was carried out during the period covered by this "interim period." For example: The fee to be determined is for the interim period September 30 to March 31. During the old permittee's last fiscal year, 60 percent of the concession's business occurred between September 30 and March 31. To compensate for a shortened fee year, the break-even point for each kind of business is adjusted to 60 percent of the fee schedule figures. In case of groceries, the break-even point becomes  $70\% \times .60 = 42\%$ .

The following example illustrates the application of the procedure to a winter sports permit.

GFA	\$1,000,000
Sales last year	\$ 370,000
Interim period	1/1-3/31
Sales from 1/1-3/31 last year	\$ 222,000

Percentage of 1/1-3/31 sales last year to total sales:  $(\$222,000 - \$370,000) = 60\%$

This year sales:				Breakeven		Rate Base
<u>Source</u>	<u>Amount</u>	%	%		%	
Service, food	\$ 50,000	20	70	1400	1.25	2500
Lifts, Tows & SS	<u>\$200,000</u>	<u>80</u>	<u>20</u>	<u>1600</u>	2.00	1600
	\$250,000	100		3000		18500

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To determine the interim period break-even point, multiply the composite break-even point by the percentage of business occurring during the period comparable to the interim period last year:

$$.60 \times .30 = .18(18\%)$$

Interim period break-even point in terms of dollars:

$$.18 \times \$1,000,000(\text{GFA}) = \$180,000$$

Fee calculation for the interim period:

\$180,000 at .93 (1/2 of composite rate base)	= \$1,674.00
\$ 70,000 at 2.78 (1 1/2 of composite rate base)	= <u>\$1,946.00</u>
Interim period fee	\$3,620.00

No comparable adjustment shall be made to fees to the seller for a shortened fee year. This would require that the procedure be covered in the permit as a specific clause and is not justified.

#### **2716.14 - Application of Transfer Fee**

The initial billing to a new permittee must include the transfer fee (FSH 2709.11, sec. 31.31).

#### **2716.2 - Terminations**

(See FSM 2705 for further direction.) Special use permits terminate through agreement with the holder or when a condition or term in the permit that provides for termination is met. For example, if a permit clause specifies that the permit terminates for nonpayment of fees, and the holder fails to pay the required fees within the specified time, the permit terminates. Since termination does not involve a decision by the authorized officer, terminations are not appealable.

When a permit terminates, send the permittee a certified letter, return receipt requested, stating:

1. That the permit has terminated.
2. The reason why the permit terminated.
3. That the improvements on the land under permit must be removed by a specified date.
4. That improvements remaining on the land beyond that date are the property of the United States. See FSM 2716.4 for time limits.

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### **2716.3 - Revocations**

(See FSM 2705 for further direction.) In all cases of revocation, the permittee is entitled to adequate notice and a statement of the reasons for the action. If a breach is involved, provide the permittee an opportunity to cure the breach before the revocation becomes final. Usually not more than 90 days should be granted to cure the breach. A reasonable period must be allowed for removal of improvements (FSM 2716.4). The proposed revocation action must be reviewed by the Regional Office of the General Counsel. Notice of revocation shall be given the permittee by certified mail in the same manner as for termination (FSM 2716.2).

1. Term Permits. Revoked only by an officer superior in rank to the issuing officer:
  - a. When there has been a breach of the conditions of the permit or violation of law or regulation and the permittee has been given an opportunity to show cause why the permit should not be revoked and has failed to do so.
  - b. When the land is required for higher public use. Action under this authority shall be fully explained to the permittee. Justification procedures to be followed in revoking a recreation residence permit for a higher public use are listed in FSM 2721.23e. Similar procedure shall be followed for other types of uses.
2. Permits. Revoked only by an officer superior in rank to the issuing officer:
  - a. When there has been a breach of the conditions of the permit or violation of law or regulation and the permittee has been given an opportunity to show cause why the permit should not be revoked and has failed to do so.
  - b. At the discretion of the Forest Service; however, this discretion shall normally be exercised only:
    - (1) When the land is needed for more important public purposes.
    - (2) When the present use has become unsatisfactory or undesirable.

### **2716.4 - Disposition of Improvements**

Ownership of improvements in terminated special use cases is determined by the clauses in the permit. These provisions constitute sufficient authority for the disposition by sale or otherwise of improvements left on special use areas when permits have been revoked, terminated, or abandoned.

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When a permittee is informed of revocation or termination, give the permittee written notice of a definite date upon which all structures or improvements must be removed. Inform the permittee that if structures or improvements are not removed by the date set, they become property of the United States.

The period allowed for the removal of improvements may vary with each case. For improvements of a simple nature and with good access, a reasonable period may be 3 months. For those of a more complex nature, with more difficult problems of access and a short season, a longer period may be required, such as from 6 to 12 months. In no case may the Forest Service impede the removal of improvements by placing impossible demands on the permittee. For instance, if a structure may be moved to another location, sufficient time shall be allowed for removal and a reasonable amount of clearing must be allowed.

When improvements have not been removed within the time allowed, they become Government property and shall be posted with Government-property signs. The improvements may then be sold or otherwise disposed of. However, consultation with the local Regional Office of the General Counsel is required before this final action is taken.

Receipts from the sale of improvements cannot be used to offset unpaid fees.

## **2716.5 - Inspections**

### **2716.51 - Permittee Responsibility**

Permittees have the responsibility of currently inspecting the buildings, both Government and privately owned, and areas covered by special use permit, to ensure that the public safety, health, and welfare are adequately protected. Forest officers shall inform permittees of this responsibility at the time of permit issuance, and whenever official inspection of special use areas reveals that permittees are not redeeming their responsibility.

### **2716.52 - Forest Service Responsibility**

It is the responsibility of the District Ranger to ensure that the terms of the special use permit are met and that the land and resources are used in accordance with the objectives and policies governing use of the National Forests. The primary means through which Rangers carry out this responsibility is through inspection. This does not dismiss the need for making personal contacts, negotiating, and reaching an understanding with the permittee.

Compliance reviews of nondiscrimination assurances and requirements shall be made a part of each inspection (FSM 1770 and FSH 1709.11, ch. 70).



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All special uses must be inspected regularly. Permittees should be invited to participate in the inspection. Inspection frequency depends upon the character of the use and conditions found at the last inspection. The objective of inspections is to determine whether:

1. Use is in accordance with the permit and all requirements of the permit are being satisfied, including nondiscrimination requirements.
2. Permit adequately protects the interests of the Government and the fee is correct.
3. Permit is still desirable from the public interest point of view.

While inspections are made for permit compliance, they can also be helpful to the permittee in managing the operation. A poor understanding of permit stipulations often is the cause of violations. Inspectors must continually ensure that the permittee understands the permit.

A written report of each inspection must be prepared. A copy of the report shall be placed in the case file and a copy in most cases provided to the permittee. Include public safety, sanitation, fire hazards, nondiscrimination, and other critical items, which may involve liability in each inspection report. Deficiencies should be discussed with the permittee and such discussion shall be noted in the permit file. Form FS-2700-1, Report on Conditions of Special Use Area, should be used whenever it is suitable.

Recommendations for changes in the special use permit, made as a result of inspection, shall be forwarded to the officer authorized to make the change.

During construction, inspections must be frequent enough to ensure compliance with plans. The permittee may be invited to participate in any inspection. In preparing for such an inspection, a review of the file and especially the permit is necessary. Obtain technical assistance on engineering or architectural matters when needed.

### **2716.53 - Inspection Frequencies**

The minimum inspection frequency objective is provided below:

1. Semiannually. Uses of a temporary nature. These should also be inspected before closing the permit.
2. Annually. Where use is seasonal, the inspection should be made during the operating season.

Boat dock and wharf  
Club  
Organization camp  
Condominium

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Hotel, motel  
Resort  
Campground and picnic ground  
Cave or cavern  
Park or playground  
Trailer court or camp  
Tramway  
Bathhouse  
Marina  
Rental service  
Restaurant  
Service station  
Store, shop, or office  
Watershed (36 CFR 251.9)  
Winter-sports resort  
Lift  
Ski slope  
Ski activities  
Disposal area  
Houseboat  
Recreation residence  
Outfitting and guiding  
Vendor and peddler  
Apiary  
Cultivation  
Pasture  
Residence  
Range facility  
Motion-picture and television location  
Treasure trove  
Training  
Watershed agreement  
Camp  
Processing plant  
Antiquities  
Canal  
Flume, log chute  
Railroads and stations  
Stock driveway, firelane  
Pipeline, oil and gas transmission  
Powerline  
Electronic site  
Telephone and telegraph

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Water transmission  
Reservoir and dam (see FSM 7570 for engineering inspections)  
Water diversion and weir  
Stock water  
Wildlife water supply system

3. Biennially

Golf course  
Orchard  
Hospital or sanitarium  
Residence of community nature  
School  
Service building  
Fish hatchery  
Fur farm  
Warehouse, storage yard  
Target range  
Weighing station  
Antenna system  
Well, spring, windmill  
Water system and supply

4. Triennially

Shelter  
Fence  
Monument  
Observatory  
Racetrack  
Cemetery  
Shelter  
Sign  
Airport and beacon  
Road  
Convenience enclosure  
Barn and shed  
Church  
Marker  
Experimental and demonstration  
Powerplant

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### **2716.54 - Audit of Permittee Records**

Forest Supervisors are responsible for meeting the requirements for auditing concession uses as established in the Auditing Concessions Handbook (FSH 1409.15).

### **2716.6 - Records**

Each special use permit shall be filed by individual case folder. When more than one use is included in a permit, the case shall be identified by the primary use.

Material in case folders should be arranged systematically. The following is suggested:

1. Applications and report, drawings, forms, maps, and soon.
2. Permits and amendments.
3. Documentation of fee development. Gross fixed assets (GFA) records and financial statements in concession permits.
4. Related correspondence. Bind in date order.
5. Audit reports and inspection reports.
6. Form FS-6500-89, Bill for Collection. Place in an envelope, fastened to the file folder.
7. Larger maps. Fold letter-size, place in envelope and fasten to the file folder. If too large, cross-reference to where maps are filed. Arrange to allow opening to either the right or left without detaching from folder.

In transfer of improvements, pertinent material from the old file shall be brought forward to the new file, such as application, report, map, information, which is the basis for the new permit, and information relative to tenure if one has been established.

### **2717 - FINANCING OF PERMIT IMPROVEMENTS**

An applicant's financial qualifications, including sources of funds to be used for development and operation, are reviewed and verified prior to issuance of a special use permit (FSM 2712.1). It is important to keep informed about a permittee's financial status, after a permit is issued, to ensure a permittee's continuing financial ability to perform.

Only under limited circumstances does the Forest Service become directly involved or participate in the permittee's efforts in obtaining capital and/or securing loans.

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### **2717.1 - Sale of Long-Term Passes at Commercial Public Service Sites**

Permit provisions, including the fee system and the regulation of rates charged to the public, recognize the permittee's need to service a certain level of debt burden and be able to operate at a profit. Permittees may be able to obtain working capital needed for construction of improvements by the sale of long-term passes. Long-term passes as used in this text means a commitment of services and accommodations for periods of time exceeding one season or one year. These passes are provided by the permittee at a lump-sum cost to purchasers.

The opportunity to raise money in this manner is available to all commercial permit operators. Regional Foresters have nondelegable authority to approve the sale of long-term passes subject to the criteria and conditions in FSM 2717.11 - 2717.17.

#### **2717.11 - Use of Revenues**

Money derived from the sale of long-term passes must be used for the limited purposes of designing, purchasing, and installing major capital improvements with an expected useful life in excess of the term of the passes. This money may not be used to offset expenses involved in the sale of the passes or the tax obligations resulting from such sales. The money may not be used to pay off financial debts or commitments made prior to Forest Service approval of the long-term pass sale program, nor may the funds be used for operational purposes.

#### **2717.12 - Tenure**

1. All passes shall expire upon termination of the special use permit for any cause, or upon transfer of ownership of the permitted improvements. The permittee shall make no commitments on use of the area that would obligate a future permittee.
2. The term of these passes may not exceed the term of the special use permit. Sale of lifetime passes shall not be permitted.

#### **2717.13 - Equal Availability and Privileges**

1. Passes must be equally available to the public, regardless of place of residence.
2. Pass holders shall not be provided privileges for services not enjoyed by the general public.

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### **2717.14 - Numbers To Be Sold**

1. The permittee may sell only as many passes as necessary to finance the cost of specified facilities as mutually agreed upon in advance by the permittee and the Forest Service.
2. The total number of passes that may be in force at one time shall be limited, based on the carrying capacity of the site and/or facilities.

For winter sports sites, passes in force at one time shall not exceed 10 percent of the comfortable skier capacity as determined by the Forest Service, or 200 passes, whichever is less.

### **2717.15 - Fee Payment**

Revenue received by permittee from the sale of long-term passes is considered a part of gross sales on an annual basis. Determine gross income by multiplying the total number of long-term passes in force each year by the price of the regular adult season pass for that season (FSM 2715.11c, para. 4a).

### **2717.16 - Legal Considerations**

1. All passes shall contain a printed disclaimer releasing the United States from any liability which might arise from the terms of the passes.
2. The pass is subordinate to the special use permit and is subject to all requirements of the permit, and all present and future Federal, State, and local laws, regulations, and policies.
3. If loans or loan guarantees have been made to the permittee by private parties or Federal agencies (Farmers Home Administration, Small Business Administration, and so on), consented to by the Forest Service, said parties or agencies shall be consulted prior to approval of long-term passes.

### **2717.17 - Documentation**

1. The permittee and the purchaser of the pass shall enter into a written sales agreement, which clearly identifies the rights and obligations of each. The agreement shall define the limitations established by the Forest Service and the permittee; as a minimum it shall include items in FSM 2717.12, FSM 2717.13, paragraph 2, and FSM 2717.16, paragraph 1, and other restrictions as may be established by the permittee. The form of the written sales agreement shall be approved in advance by the Forest Service.
2. The sales agreement shall also include conditions as to refunds or other financial obligations, if any, of the permittee to the pass holder.

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3. Passes purchased back by the permittee may not be reissued or resold.
4. The permittee shall establish accounting procedures acceptable to the Forest Service to account for the revenues, disbursements, ownerships, and/or transfers of long-term passes.
5. An amendment to the special use permit shall be prepared to authorize the sale of long-term passes.

**2717.2 - Loans to Holders Guaranteed by Small Business Administration and USDA Rural Development**

Financing of construction of needed public service developments may be through loans to holders guaranteed by the Small Business Administration (SBA) or USDA Rural Development.

The authorized officer, with approval from the Regional Forester, may enter into an agreement with the lender and the SBA establishing the parties' rights and obligations in connection with the loan.

The SBA and the Forest Service have executed a master Service-wide Memorandum of Understanding (MOU), which provides for the parties to develop and participate in a program concerning issuance of SBA-guaranteed loans to holders of special use permits. The text of this MOU is set out in FSM 1539.52. The MOU includes an agreement, which is to be executed, by the Forest Service, the SBA, the lender, and the borrower/holder for loans to the holder that are guaranteed by the SBA. This agreement has been reproduced as Form FS-2700-11, Agreement Concerning Small Business Administration Loan for Holder of Special Use Permit: [No.], and is available electronically. (See FSH 1309.14, sec. 14.22, for procedures on requesting electronic forms.)

The agreement shall not be modified other than to supply information required on Form FS-2700-11 or to substitute USDA Rural Development for SBA in Form FS-2700-11, if USDA Rural Development is guaranteeing the loan.

Prior to execution of the agreement by the authorized officer and prior to consummation of the loan transaction, request review by the Regional Office of the General Counsel of the underlying loan documents to verify that no security interest is being created in Federal property or the special use permit.

Agreements executed under the direction in FSM 2717.2 prior to November 6, 1996, may remain in effect, but they shall not be reapproved by the Forest Service for subsequent transactions. Should those loan packages be reprocessed, such as for change of ownership of the improvements or refinancing, secure a signed statement rescinding the old agreement from the parties who executed it and replace it with a new, fully executed agreement document on Form FS-2700-11.

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### **2717.3 - Loans to Holders Not Guaranteed by Small Business Administration or USDA Rural Development**

Use Form FS-2700-12, Agreement Concerning [Name of Lender] Loan for Holder of Special Use Permit: [No.], for documenting loans to holders that are not guaranteed by SBA or USDA Rural Development. Any agreement other than that contained in Form FS-2700-12 may not be made. (See FSH 1309.14, sec. 14.22, for procedures on requesting electronic forms.)

The authorized officer, with approval from the Regional Forester, may enter into the agreement with the lender establishing the parties' rights and obligations in connection with the loan.

The agreement shall not be modified other than to supply information required on Form FS-2700-12.

Prior to execution of the agreement by the authorized officer and prior to consummation of the loan transaction, request review by the Regional Office of General Counsel of the underlying loan documents to ensure that no security interest is being created in Federal property or the special use permit.

Agreements executed under the direction in FSM 2717.3 prior to November 6, 1996, but they shall not be reapproved by the Forest Service for subsequent transactions. Should those loan packages be reprocessed, such as for change of ownership of the improvements or refinancing, secure a signed statement from the parties who executed it and replace it with a new, fully executed agreement documented on Form FS-2700-12.

### **2717.4 - Securing Financing for Cooperative or Condominium-Type Lodging**

Direction on lodging units financed under cooperative or condominium-type arrangements is in FSM 2721.3.

## **2718 - USE RESTRICTIONS AND LIMITATIONS**

The rights and privileges granted with authorized occupancy of National Forest System lands under the jurisdiction of the Forest Service are restricted frequently by the following limitations: land dedications, classifications, withdrawals, obligations imposed upon the land by prior land-use authorizations, and by certain agreements such as those made with municipalities. Specific use restrictions and limitations follow in FSM 2718.1 to 2718.7. For direction on responsibilities and delegations of authority to Forest officers and other officials, see FSM 2704.



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## **2718.1 - Special Areas**

### **2718.11 - National Forest Wilderness and Primitive Areas**

Grant uses in National Forest Wilderness Areas only when consistent with the Wilderness Act (16 U.S.C. 1131-1136; FSM 2701.1); the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210; FSM 2701.1); subsequent wilderness legislation; Title 36, Code of Federal Regulations, section 293.3 (36 CFR 293.3); and wilderness management direction in FSM 2320. Grant uses within primitive areas as provided by 36 CFR 293.17 and in conformance with primitive area management direction.

### **2718.12 - National Recreation Areas**

Authorize uses in National Recreation Areas (NRA) according to direction in Regional supplements for special uses authorized on National Forest System lands within the boundaries of NRA's. Uses authorized shall be not conflict with the purposes for which the NRA was established.

### **2718.13 - Recreation Areas**

Forest officers may grant special use authorizations in areas classified for recreational purposes, provided the uses are compatible with the purposes for which the areas are classified (36 CFR 294.1).

### **2718.14 - Research Natural Areas**

To preserve Research Natural Areas in an unmodified condition, do not allow grazing, timber cutting, road and trail development, or special uses of a permanent nature, except to serve research purposes in these areas, unless otherwise provided by law (36 CFR 251.23; FSM 1010; FSM 4060).

### **2718.15 - Experimental Forests**

Station Directors and the Director, Forest Products Laboratory may authorize uses that support research efforts or are compatible with ongoing operations at experimental forests.

## **2718.2 - Withdrawn Areas**

(See FSM 2760 for further direction.) Federal agencies may use National Forest System lands that the Secretary of the Interior has withdrawn for such purposes as described in the original withdrawal without obtaining a special use authorization.

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Special use authorizations that are granted after a withdrawal are subordinate to the purpose of the withdrawal. In the authorizing instrument, provide for termination without compensation in the event the land is ever needed for the withdrawal purpose and stipulate that no claims may be made against the United States in the event the use is terminated for the withdrawal purpose.

Before authorizing any third party use of withdrawn areas, secure concurrence of the agency using the withdrawal (these agencies may include the Bureau of Reclamation; Bureau of Land Management; Fish and Wildlife Service; Federal Energy Regulatory Commission; Federal Aviation Administration; Coast Guard; Department of Defense (usually through Army Corps of Engineers); and Federal Energy Regulatory Commission).

### **2718.3 - Rights-of-Way**

#### **2718.31 - Road Rights-of-Way Held by States or Their Political Subdivisions**

This section covers Revised Statute (R.S.) 2477 roads, which refers to the authorization granted to State agencies to accept roads over public lands by R.S. 2477 roads authority (43 U.S.C. 932), which has since been repealed by the Federal Land Policy Management Act (FLMPA; 43 U.S.C. 1715). To qualify, roads had to be accepted before the statute was repealed in 1976. To determine whether a road has been accepted, examine State law and consult with the Office of the General Counsel on a case-by-case basis. Generally, to constitute a valid acceptance, some mechanical improvements must have been made during the construction phase of the road.

1. R.S. 2477 roads may be used for highway purposes only. Rights-of-way vested in States or political subdivisions, outstanding at the time of acquisition of those lands for National Forest purposes, are subject to and controlled by applicable State law and court decisions and the terms of the document which created the rights. Any other use, or any use exceeding the boundaries of the original grant, must be authorized by a special use permit.

2. The Forest Service and the Department of Transportation have the authority to grant rights-of-way on National Forest System lands as easements for States and political subdivisions to use for road or highway purposes only, as prescribed by the grant. The Forest officer who authorizes use of these rights-of-way for other than highway purposes, should consult the Office of the General Counsel before granting any other uses on these rights-of-way.

3. The Forest Service exercises limited control over R.S. 2477 roads but may take legal action if necessary to protect surrounding adjacent National Forest System lands from undue degradation or nuisance.

#### **2718.32 - Acquired Rights-of-Way**

The language of the right-of-way document governs what uses a Forest officer may authorize for rights-of-way. The necessary right(s) must exist for granting or permitting a proposed use to others.

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If the Forest Service has acquired a right-of-way easement, the Forest officer may grant special use authorizations for the rights acquired, subject to the limitations and restrictions on use established in the acquisition document and through Forest land and resource management plan requirements.

Depending upon the right conveyed, landowners may use or authorize other uses on right-of-way easements acquired by the Forest Service, provided such uses do not diminish or adversely affect the rights acquired by the United States. The Forest officer should consult with the Office of the General Counsel in developing the proper documentation for this consent (FSM 5460).

### **2718.33 - Railroad Rights-of-Way**

Subject to existing rights already granted, the Forest Land Policy and Management Act (43 U.S.C. 501; FSM 2701.1), repealed prior authorities and conferred new authority for issuing railroad uses. The act provides that when it is equitable and in the public interest, authorizations may be issued for realignment of railways under the same terms and conditions for annual rental, duration, and nature of interest as were applicable on the relinquished portion of the right-of-way.

Pre-1875 railroad grants are generally treated as qualified fees and post-1875 grants as qualified easements. Most railroad grants were made under the Act of March 3, 1875 (43 U.S.C. 934-939; FSM 2710.2), which conferred exclusive use and possession to the surface rights of the conveyed land. Consequently, the railroad must give consent for the United States to use or to authorize third-party use of the right-of-way.

Non-railroad uses of rights-of-way require Forest Service authorization.

The Government has limited control over the manner and type of railroad and type of railroad usage. However, the Forest Service may take legal action against any railroad usage which causes a nuisance or undue degradation to the adjacent National Forest System lands.

### **2718.4 - Municipal Watersheds**

Forest officers, in special circumstances, may authorize third-party uses on municipal watersheds set aside by agreement under Title 36, Code of Federal Regulations, section 251.9 (36 CFR 251.9), or previously withdrawn by Executive order as provided in the Act of May 28, 1940 (16 U.S.C. 552a). However, they shall issue municipal watershed uses only when there is no interference with the intent and purpose of the agreement or Executive order. Any authorized use must be in harmony with the Forest land and resource management plans for a particular watershed (FSM 2540). Forest officers should consult with the municipality before issuing such special use authorizations.

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## **2718.5 - Acquired Lands Subject to Reserved or Outstanding Rights**

Some lands that the Forest Service acquires are subject to previously reserved or outstanding rights (FSM 5470 and FSM 2830). Reserved rights are legal rights in property that the seller retains at the time the property is conveyed to the United States. Reserved rights may be subject in the deed of conveyance to the Secretary of Agriculture's rules and regulations. When reserved rights are made subject to the Secretary's rules and regulations (36 CFR 251.14-251.15, 251.18), the exercise of reserved rights generally requires a special use authorization, a plan of operation, or some other appropriate legal authorization.

Outstanding rights, sometimes called valid existing rights (VERs), are legal rights in property owned by third parties other than the United State's grantor. Outstanding rights are those rights which have been severed and purchased by third parties before the United States' acquisition. The United States has limited control over outstanding rights except to prevent undue degradation or nuisance to adjacent surrounding National Forest System land.

Rights may be reserved or outstanding for a stipulated period of time or in perpetuity. The deed conveying title to the United States discloses the status of reserved and outstanding rights. The Forest officer may not authorize any uses in National Forest System lands or interests in lands which conflict with rights which have been reserved or are outstanding in third parties. However, uses in lands or legal interests owned by the United States may be authorized, provided the uses are compatible with forest land and resource management plans and do not interfere with reserved or outstanding rights. If uses conflict or have any appearance of potential conflict with reserved or outstanding rights, subordinate the uses to the outstanding or reserved rights.

As opportunities occur, replace outstanding authorizations (such as Revised Statute 2477 roads (FSM 2718.31); or Department of Agriculture, Soil Conservation Service, or other agency-administered authorizations) with appropriate Forest Service special use authorizations under current authorities.

## **2718.6 - Mineral Operations**

### **2718.61 - Mining Claims**

The holder of a valid claim (FSM 2811) is entitled to use the surface of the land within the claim for all proper mining purposes as prescribed by the mining laws and Federal regulations. When required, authorize the claimant's surface use of mining claims through the operating plan procedures (36 CFR 228; FSM 2817). Issue a special use authorization for use of mining claims by the claimant or others for nonmining purposes. Except for prospecting activities (FSM 2817), do not authorize off-claim mining-related uses by an operating plan; issue a special use authorization for such uses. Follow the criteria outlined in FSM 2703 when considering on- and off-claim nonmining uses.

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On claims for which the United States holds surface rights subject to the Act of July 23, 1955 (30 U.S.C. 601, 603, 611-615), the Forest officer may authorize surface use and occupancy without the written consent of the claimant (FSM 2813). However, do not allow such authorization to interfere with the claimant's operations. Give prior notice to the claimant of the intent to authorize such use.

On mining claims verified as being valid before July 23, 1955, subsequent surface-use authorizations that the Forest Service issues to third parties require the written consent of the claimant. Make such authorizations subordinate to the rights of the claimant, unless the claimant waives asserted rights (FSM 2813). In such special use authorizations, provide for termination if the claim is patented.

**2718.62 - Lands Under Mineral Lease, License, or Prospecting Permit**

The Forest Service manages the surface resources of National Forest System lands on which the Department of the Interior has issued coal exploration licenses, prospecting permits, and mineral leases. The Forest Service may authorize other uses on mineral lease areas only if the uses are consistent with the rights of the lessee (FSM 2822).

**2718.7 - National Forest System Lands Included Within Department of the Interior Easements**

Easements previously granted by the United States Department of the Interior (USDI) are currently administered by the Secretary of Agriculture under the Federal Land Policy Management Act of 1976 (FLPMA), as delegated to the Forest Service (FSM 2701, 2704). These easements constitute prior rights to the use of National Forest System lands. Issue authorizations for additional uses within an easement area only upon assurance that the subsequent use will not diminish the rights and privileges of the USDI easement holder. The easement holder must give written agreement for such use unless such agreement has been waived through the terms of the easement. Subsequent applicants must provide appropriate assurances and negotiate required mitigation measures with easement holders. Except for the Oil and Gas Pipeline Amendment to the Mineral Leasing Act, FLPMA repealed all of the authorities for USDI easements (FSM 2701.2). Existing easements, however, remain in effect until they expire or are otherwise terminated under the terms of their issuance.

**2719 - USES FOR WHICH SPECIAL USE AUTHORIZATIONS ARE NOT REQUIRED**

Consult with the Office of General Counsel on a case-by-case basis to determine the required authorization for the following uses, which may or may not require a special use authorization:

1. Uses on lands the United States acquired subject to occupancy without special use authorization because of reservations or outstanding rights (FSM 2703).

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2. Existing uses that the Federal Power Commission or the Federal Energy Regulatory Commission authorized with licenses for hydroelectric power production or transmission under the Federal Power Act of June 10, 1920 (FSM 1010) issued before October 21, 1976, and those licenses issued during the period of October 21, 1976, to July 6, 1980, for which the Forest Service waived the requirement for a special use authorization (FSM 2770).

3. Activities specifically authorized by mineral lease, coal exploration license, or prospecting permit within the designated area and conducted by the holder.

The use by the lessee of existing forest development roads within a mineral lease area is ordinarily granted by the lease, but when a closure or restriction order has been issued by the Forest officer, the Forest officer may require a road-use permit (36 CFR 261.50; FSM 2822).

Do not require a special use authorization for surface impoundment or subsurface disposal of water produced from oil and gas operations on National Forest System lands when the Bureau of Land Management asserts jurisdiction over that activity in the management of Federally owned leasable minerals (36 CFR 251.53(L)(1)). The U.S. Environmental Protection Agency or the State, where the State has achieved primacy (40 CFR 122, 123, 146), requires an underground injection permit for subsurface impoundment.

4. Mining and mining-related activities conducted by the claimant on mining claims filed under the provisions of the General Mining Law of 1872 (36 CFR 228, Subpart A; FSM 2817).

5. Activities or occupancy by holders acting as agents or contractors of the Federal Government if those uses are authorized by contract or other permit, such as timber sales, mineral material contracts, or range facilities authorized under grazing permits.

6. Noncommercial uses by individuals such as camping, picnicking, hiking, fishing, hunting, riding, boating, and similar activities for outdoor recreation. However, such uses may require payment of a prescribed fee for use or occupancy of sites having an established schedule of fees.

7. Emergencies, use of forest development roads and trails not closed to use, and impromptu group activities. Require special use authorizations for planned recreation events or arranged special events (36 CFR 251.50).

8. The collection of minor forest products, such as flowers, plants, berries, acorns, nuts, or small amounts of medicinal roots, from areas other than designated recreation, research, natural, or other areas closed to such activities. However, such collections are limited to reasonable quantities for personal use; there can be no disturbance of surface resources; and the products must not be protected by State or Federal laws or regulations. Use a sale permit or contract to authorize collections of other products and collections for commercial purposes (36 CFR 223.1(a); FSM 2467).

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9. Confirmed rights for highways under Revised Statute (R.S.) 2477 (43 U.S.C. 932; FSM 2718.7) and canals and ditches under R.S. 2339 (43 U.S.C. 661). Observe the boundaries that existed at the time the grant was accepted. The same legal principles apply to R.S. 2339 as to R.S. 2477. A formal grant or document is not required under these authorities. Right-of-way width is generally limited to that area actually used for the facilities. However, State law existing at the time of acceptance may provide for a different width. Do not require special use authorizations for these uses, except for modification or enlargement of the facilities outside of the existing right-of-way (FSM 2703).

10. The Secretary of the Department of Transportation may grant rights-of-way across Federally owned lands or interests in lands to a State highway department or its nominee for interstate highways, the Federal Aid System, and other highways constructed under chapter 2 of the Act of August 27, 1958, as amended (23 U.S.C. 107d and 317; FSM 2701.1). Although special use authorization is not required, conditions for the grant must be acceptable to the Federal agency administering the lands.