

U.S. Department of Transportation  
Federal Highway Administration

# Manual for Federal Land Transfers for Federal-Aid Projects



**MOVING THE  
AMERICAN  
ECONOMY**

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## TRANSFER OF LANDS AND INTERESTS IN LANDS OWNED BY THE UNITED STATES

### 1.0 INTRODUCTION

This section introduces the Federal Land Transfer process that is described in greater detail in the following sections of this manual<sup>1</sup>.

When highways cross lands owned by the United States and administered by Federal Agencies (Controlling Agency), a property interest, generally by highway easement, can be conveyed to a State Department of Transportation (State DOT) or its nominee (i.e. city, county, town, public-private partnership) to grant the rights necessary to construct, operate and maintain the roadway. A property interest for a material site may also be conveyed to a State DOT or its nominee. Authority is provided through 23 U.S.C. 107(d) and 317 to the Secretary of Transportation, who has further delegated the authority to the Federal Highway Administration (FHWA) to effectuate the transfer. The process is referred to as a Federal Land Transfer.

The FHWA, pursuant to the process set forth in [23 CFR 710.601](#), assists State DOTs in obtaining property rights necessary for projects, including necessary material sites, on or eligible for the Federal-aid system. This process is optional as State DOTs can sometimes deal directly with the Controlling Agency under other statutory authorities.

When project development begins and potential right of way needs over Federal lands are identified, the first step is to identify the Controlling Agency with jurisdiction over those lands. Once the Controlling Agency is identified, it should be notified of the project's potential use of its land and should be invited to be a cooperating agency in the environmental process.

If the alternative selected at the conclusion of the environmental process does necessitate a Federal Land Transfer, the subsequent negotiation process for a Letter of Consent from the Controlling Agency and, as applicable, a right of entry will benefit if all parties involved in the transaction understand and have consideration for one another's missions. Likewise, follow-up after the project is completed is also essential to ensure that all required paperwork has been completed and the highway easement is properly recorded.

A Letter of Consent with a right of entry is often used for new location and upgrade projects to grant permission to enter on Federal Lands and construct the project. The scope of the letter generally includes the required terms and conditions identified by the Controlling Agency as necessary to protect its resources and mission from potential adverse impacts from the transportation use. These terms and conditions would be incorporated into the highway easement deed if applicable to the operation and maintenance of the facility.

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<sup>1</sup> For more information generally concerning the Federal land transfer process, see "Synthesize Division Interagency Real Estate Agreements and Identify Practices for Improved Interagency Support", Publication No. FHWA-HEP 06-012 at: <http://www.fhwa.dot.gov/realestate/interagency/index.htm>.

FHWA's Federal Land Transfer regulation, 23 CFR 710.601, requires that the highway easement deed must contain an adequate description of the right of way, and must contain any required conditions to identify the limitations inherent in the land transfer. The highway easement deed must be recorded in the local land records.

During the design phase, if there are changes affecting parcels subject to the transfer, the Controlling Agency should review the changes and if appropriate, modify the mitigation measures to address additional or different impacts. Design changes that effect the location of the right of way limits or legal description of a *recorded* deed will require a deed amendment. For some projects, it will be beneficial to record the deed after construction is completed to avoid the necessity for deed amendments.

## 1.1 GENERAL PROCEDURES

- (a) Title to Federal land is held by the United States of America, under the administration of a specified agency of the United States. The provisions of 23 U.S.C. 317 and 23 U.S.C. 107(d) authorize the Secretary of Transportation and, by delegation, the - FHWA to transfer Federal land under the administration of another Federal agency to a State DOT or its nominee. The FHWA does not take title to the land nor does it bring the land under its administration or control. It simply acts as a land transfer agent to transfer an interest in land from the United States to a State DOT. In its role as the land transfer agent of the United States, FHWA will need to balance its responsibility for stewardship of the Federal land with its responsibility to provide for a safe and efficient highway system.

The process through which transfers are implemented is set forth below. This manual includes various terms common to Federal land transfers pursuant to Section 107(d) and Section 317. Definitions of such terms are included in the Appendix. Also included in the Appendix are various other documents referenced below as well as sample documents associated with specific and hypothetical transfers of Federal lands associated with highway projects to be undertaken by a State DOT<sup>2</sup>.

- (b) The FHWA may determine, or concur in a determination by a State DOT, that land owned by the United States is reasonably necessary by a State DOT or its nominee for: (1) right of way or a material site for a project undertaken with Federal-aid highway funds; (2) certain highway projects eligible for Federal-aid under Chapters 1 and 2 of title 23, United States Code; and (3) certain highway-related transfers in conjunction with a military base closure under the base realignment and closure laws (BRAC)<sup>3</sup>. The FHWA may then arrange with the Controlling Agency to transfer to a State DOT or its nominee any part of the land or interests therein, owned by the United States, under the authority of Sections 107(d) or 317. Section 107(d) applies

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<sup>2</sup> Reference is also made to the CD "Division Office Right of Way Manual", furnished by the HEPR to Division Realty Officers, and including various information included in the Appendix to this Manual.

<sup>3</sup> Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526, 102 Stat. 2623), and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 100-526, Part A of Title XXIX of 104 Stat. 1808); codified at 10 U.S.C. 2687.

to the transfer of land for Interstate projects, while Section 317 can be used for land and materials for Interstate and certain other non-Interstate projects. The FHWA's regulations implementing Sections 107(d) and 317 can be found at 23 CFR 710.601.

Federal Land Transfer requirements are clearly applicable for projects undertaken with Federal-aid Highway funds. However, for the Federal Land Transfer provisions to apply to highway projects that are eligible for Federal-aid (but not being funded by Federal-aid), FHWA must determine that a strong Federal transportation interest exists for the transfer. Such determination should be made on a case-by-case basis by the Division in conjunction with the Headquarters Office of Environment, Planning, and Realty (HEPR).

The primary focus of this manual is on Federal land transfers involving grants to State DOTs under Chapters 1 of title 23, United States Code. The procedures for Federal Lands Highway projects funded under Chapter 2 may vary due to FHWA's more direct role in project development and construction contracting activities. The Office of Federal Lands Highway should be consulted to determine the requirements for a Federal Land Transfer for these projects.

Where authorized, the transfer of the land may also be accomplished directly by the Controlling Agency to the State DOT or its nominee, under the Controlling Agency's statutory authority.

- (c) The statutory and regulatory requirements and procedures governing the transfer of United States Government-owned lands for the purposes described above are set forth in this part of this manual. This manual does not address steps involved in the planning and project development process that occur prior to a request for a Federal land transfer (note that additional information on these requirements may be available at the FHWA – Planning, Environment and Realty website at <http://www.fhwa.dot.gov/hep/index.htm>).
- (d) The State DOT should contact the Controlling Agency to determine if such Controlling Agency has authority to directly transfer the necessary property rights, and if so, whether it elects to proceed directly. If the Controlling Agency has authority and elects to proceed directly, the State DOT may arrange for the transfer directly with the Controlling Agency and without FHWA involvement. In the event that the Controlling Agency does not have such authority, or elects to proceed through FHWA, the process below should be followed by a State DOT to request the transfer of land through the FHWA, except in situations where a Memorandum of Understanding (MOU) or other agreement has been executed between the State DOT, FHWA Division and Controlling Agency. In those situations, the steps outlined in the MOU should be followed to the extent applicable<sup>4</sup>. A Memorandum of Understanding that alters the steps below should be reviewed and approved by FHWA counsel.

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<sup>4</sup> See sample Memorandum of Understanding at Appendix 3

- (e) The following steps provide an overview of the process to effectuate Federal Land Transfers unless otherwise determined by agreement between the FHWA Division Administrator and FHWA Counsel. Greater detail of the process steps begins at Section 1.2.

## SUMMARY OF THE PROCESS

### STEP 1

The State DOT files an application with the FHWA Division setting forth its need for the lands in accordance with 23 CFR 710.601. See also [Federal Aid Policy Guide](#). Pursuant to 23 CFR 710.201(c), the application must comply with applicable provisions of the State DOT Right of Way Manual as approved by FHWA at the time of the request. While not required at this point, in order to expedite the process it is recommended that the State DOT prepare and include a draft deed with their application in coordination with the Controlling Agency. Additionally, where appropriate, the application should identify if an interim right of entry or temporary construction easement, and its terms, is being requested.

### STEP 2

The FHWA Division (generally the Division Realty Specialist) reviews the application in accordance with the FHWA Delegation and Organizational Manual, FHWA Order M1100.1A, Part I, Chapter 5, relating to delegations of authority for real property acquisition, and determines the eligibility of the project for the proposed transfer, whether the land is reasonably necessary for the project, and the accuracy of the legal description. If the FHWA Division concurs in the proposed transfer and finds that the application and accompanying materials comply with the requirements, it will proceed to the next step. If any concerns have arisen, the FHWA Division is encouraged to consult with the appropriate FHWA Counsel.

### STEP 3

The Controlling Agency will be asked to concur in the transfer and specify any conditions necessary for the adequate protection and utilization of the reservation in which the requested land is located or, if it objects to the request, to explain its objections and certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land has been reserved. This concurrence is usually in the form of a Letter of Consent further addressed in Step 4 below. The Controlling Agency may also provide the State DOT an interim right of entry, pending execution of the deed.

### STEP 4

If the Controlling Agency concurs in the FHWA transfer, subject to conditions, the FHWA Division and the State DOT review the conditions, negotiate with the Controlling

Agency, and reach a determination as to mutually acceptable conditions. This determination identifying the mutually acceptable conditions should be documented along with the Letter of Consent. The deed is then drafted or modified by the State DOT, alone or in conjunction with the Division. The deed shall contain the clauses required by FHWA as well as the agreed-upon conditions. The deed shall also contain clauses required by 49 CFR 21.7(a)(2) (relating to nondiscrimination) All deeds shall be certified by an attorney licensed within the State as being legally sufficient under State law, as required by 23 CFR 710.601(f). See also § 1.10(b) *infra*.

#### STEP 5

If it has not already done so, the State DOT submits the proposed deed to the FHWA Division staff, who, after initial review, see checklist at Appendix X, confirms the accuracy of the legal description and plan or plat, and forwards the entire package to the FHWA Counsel with comments and recommendations, if any, along with the State DOT's application submission, the Controlling Agency's Letter of Consent, and accompanying data, and requests a legal sufficiency finding.

#### STEP 6

The FHWA Counsel and the FHWA Division staff review the submitted documents and coordinate the resolution of any remaining issues with the State DOT and Controlling Agency, as appropriate. At the conclusion of this review, FHWA Counsel determines if the appropriate process has been followed and if the deed is legally sufficient under federal law and document such finding.<sup>5</sup>

#### STEP 7

Upon receipt of a finding of legal sufficiency, the FHWA Division staff transmits the deed to the State DOT for acceptance and signature by the appropriate State official. The State DOT then transmits the deed to the Division Administrator<sup>6</sup> for execution. The fully executed deed should then be transmitted to the State DOT for recording.

#### STEP 8

Upon recordation, the State DOT should send a copy of the recorded deed to the FHWA Division and the Controlling Agency and coordinate distribution of copies to interested parties, if appropriate, and address any remaining administrative matters. The FHWA Division staff updates the appropriate FHWA Division log.<sup>7</sup>

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<sup>5</sup> Appendix 4

<sup>6</sup> By delegation of authority, the Division Administrator has authority to execute documents associated with transfer of Federal lands (e.g. see Memorandum regarding Delegation of Federal Land Transfers, dated July 30, 1998 attached as Appendix 5).

<sup>7</sup> Appendix 6



## 1.2 SUFFICIENCY OF APPLICATION (Step 1)

(a) The State DOT's application must include, at a minimum, the following information and certifications, see 23 CFR 710.601:

- The purpose for which the lands are to be used;
- The estate or interest in the land required for the project;
- The Federal-aid project number or other appropriate references;
- The name of the Controlling Agency administering the land and identity of the installation or activity in possession of the land;
- A map showing the survey of the lands to be acquired, see Section 1.3;
- A legal description of the lands desired, see Section 1.3; and
- A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and all other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303; 23 U.S.C. 138).

(b) In addition to those mandatory requirements set forth above, the State DOT's application should include a complete title report or other acceptable title information, appropriate to satisfy the State DOT's requirements for acquiring right-of-way adequate to construct, operate and maintain the project facility. The information contained in the title report or other acceptable title information should identify ownership and control of the parcel(s) proposed for transfer and all encumbrances, points of contact at the State DOT and at the Controlling Agency, together with other relevant information such as, if applicable, a request for an interim right of entry.

(c) Where a Federal land transfer request is for a nominee (e.g. local public agency such as city, town, or county), the application, and all subsequent actions in connection with the request, should be submitted by the State DOT to the FHWA Division on behalf of such nominee. In such situation, the application should include a statement signed by the State DOT identifying the specified nominee to receive the interest in the land. Additionally, in the event the proposed nominee is a private entity (e.g., when a public-private partnership is involved), the FHWA Division should consult with Headquarters to confirm whether the requested transfer is consistent with Section 107(d) or 317.

(d) Requests associated with material sites may raise additional issues that need to be considered. The following should be taken into account in evaluating a Federal land transfer request for a material site:

- A request must be in connection with project(s) eligible under Section 107(d) or 317 (Federal-aid or Federal-aid eligible). A request may pertain to materials needed for one or more such specified projects.
- As is the case in all requests for Federal land transfers, there must be adequate information (in support of the application, as required by 23 CFR 710.601 and as

described in this manual) to enable FHWA Division Staff to make its determination that the requested property interest is reasonably necessary for the project.

- The expected period of use of the material site should be indicated in the application. If appropriate, a date, number of years or event terminating the need for the easement should be specified. The period of time could be for construction of the highway only and be a temporary use or it could be for construction and ongoing maintenance of the project and be for a period as long as the highway is in operation.
- Alternatives to a Federal land transfer should be considered where appropriate. For example, where materials are not associated with projects for which a Federal land transfer is permitted, the State DOT or its nominee may negotiate for an easement directly with the Controlling Agency, if the Agency has such authority. Also, a right of access and use by license, permit, right of entry, or similar document from the Controlling Agency, not conveying an interest in the property may be appropriate and simpler to obtain for a temporary use than an easement.
- The Controlling Agency may require specific conditions for material sites, such as the location and quantity of material needed.
- A deed granting an easement for use of a material site must specifically state that use and expressly provide the purpose for the materials (e.g., construction, reconstruction, and maintenance of a highway). A deed of easement that does not expressly convey the right to remove materials, for example, does not grant such a right.

### 1.3 SUFFICIENCY OF PLATS AND LEGAL DESCRIPTIONS FOR APPLICATION PURPOSES (Step 1 continued)

(a) Maps and plats should be printed on paper of a size for attachment to the deed and satisfy applicable requirements for recording. Very large or bulky maps may be cut in sections for mounting, or reduced, provided the reduction is clear and legible. Plats that are illegible, too small, or not properly mounted should be returned to the State DOT for correction. The map or plat should show a survey of the requested land or should otherwise be sufficient to enable an engineer or surveyor to locate the land.

(b) Maps, plats, and legal and narrative descriptions should be reviewed concurrently to determine that all courses, distances and reference points in the legal description are shown on the plat, so that the documents may be used independently. A metes and bounds description should be reviewed to make certain that the description yields an enclosed parcel.

(c) Land descriptions may be by metes and bounds, a public land survey, or a legal subdivision description. The above types are preferred, but a centerline or other

description is acceptable when allowed by State law and by the Controlling Agency or by the provisions of (d) below. The description should also include the tract number and total acreage of each parcel.

(d) A road or trail in place is a sufficient boundary or monument for a right of way when there is agreement among the parties involved and such property description is not in conflict with State law. The use of a United States Geological Survey Map or an aerial photo is acceptable, instead of a centerline survey plat, for an existing road or trail. This procedure may be used for low risk boundary situations, not involving significant project expenditures, or when there is no dispute over ownership or land rights. The map or photo should be attached to the deed and a "CERTIFICATE OF RIGHT OF WAY DESCRIPTION STANDARD" (such as used by the Forest Service) may be included along with the title documents<sup>8</sup>.

(e) The plat or map at a minimum must include the following information on all copies. Additional requirements to properly identify the parcel may exist within a particular State's law.

- Control of access lines, if applicable, identified by appropriate symbol and map legend. Permitted access points should be located by survey between station numbers.
- The area to be transferred marked by shading, hatching, or other means suitable for black and white reproduction.
- The acreage or square footage contained in each tract, if feasible, and the area of very small parcels shown in square feet.
- Tract number assigned to each parcel.
- Tax parcel number
- Other existing rights/claims/easements
- Right-of-way lines
- Section lines, section numbers, and adjoining property lines, if applicable.
- Name of State and county wherein land is located.
- Citation to Federal-aid project number and project name or other appropriate reference.
- Terminal and lateral limits of the project, including temporary construction

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<sup>8</sup> Appendix 7

easements and design mitigation boundaries.

- Location of appurtenances which are significant to the project or of noteworthy value, i.e., buildings, bridges, or roads.
- Other information that may be required on maps by the Controlling Agency or public land office, such as north arrow, bar scale, corner ties, legend, vicinity map, etc.

(f) Land transfers for one project, under the administration of more than one agency, should be separately described and deeded, but processed in a coordinated manner. Land transfers for one project to more than one State DOT or nominee should also be separately described and deeded, but processed in a coordinated manner.

#### 1.4 SUFFICIENCY OF DATA – GENERAL (Step 2)

(a) Upon receipt of a State DOT's land transfer submission, the FHWA Division staff should undertake a preliminary review to see that it conforms to 23 CFR 710.601. If any items are missing or incomplete, the FHWA Division shall request these items from the State DOT.

(b) The submission from the State DOT should include an adequate number of copies, agreed upon between the FHWA Division Office and the State DOT, which meet the requirements of 23 CFR 710.601.

#### 1.5 RIGHT OF WAY APPROVALS (Step 2 continued)

(a) Before a transfer is made under Section 107(d) or 317, FHWA must make a written determination that the lands or interests in lands requested by the State DOT are reasonably necessary for the project. The determination is made by FHWA Division staff, as noted in Step 2 above. See FHWA Delegation and Organizational Manual.

(b) If Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303, applies to the parcel being transferred, Division staff must approve the use of Section 4(f) property under 23 CFR 774.3 before the transfer can be effected.<sup>9</sup> The FHWA Division staff handling such issues should coordinate with the Division Environmental Specialist, and FHWA Counsel as necessary.

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<sup>9</sup> On December 15, 2008, the United States District for the Southern District of Florida issued an order deciding that a Section 4(f) review under 49 U.S.C. 303 is triggered only when the Secretary undertakes to "approve" a transportation project or when the Department funds a project and that no such review is required where FHWA acts merely as a land transfer agent, pursuant to 23 U.S.C. 317. Miccosukee Tribe of Indians of Fla. v. United States, No. 08-21703 (S.D. Fla. Dec. 15, 2008).

(c) Most Federal land transfers being implemented under Section 317 or 107(d) are for Federal-aid highway construction projects that are subject to NEPA. For these transfers, FHWA must comply with the National Environmental Policy Act (NEPA) for the underlying transportation project itself and the NEPA documentation will identify significant impacts resulting from the acquisition of all of the right of way needed, including that proposed to be obtained using a Federal land transfer. FHWA and the State DOT should consider needs of the Controlling Agency to obtain environmental clearance. The needs are best protected by the Controlling Agency's being invited to be a Cooperating Agency in the FHWA NEPA process early in the project development process. If the Controlling Agency participates in FHWA's NEPA process, then the transfer will not typically involve an independent NEPA analysis by the Controlling Agency.

Where the transfer of Federal lands pursuant to Section 107(d) or 317 is merely a transfer of land for a project not otherwise subject to FHWA review under NEPA, the transfer may normally be processed as a Categorical Exclusion (CE) under the FHWA's regulations implementing NEPA. This generally occurs where the transfer is undertaken (1) to perfect title to an existing highway; (2) in connection with a base closure pursuant to BRAC; or (3) in connection with a project that will be constructed without Federal-aid highway funds. In these situations, the transfer may meet the criteria for a CE in Section 1508.4 of the Council on Environmental Quality's NEPA regulations (40 CFR 1508.4) and the FHWA regulation at 23 CFR 771.117(c)(5), and would not normally require any NEPA documentation. In these situations, the land transfer would not be followed by any subsequent FHWA action. In any case, in accordance with 23 CFR 710.601(d)(7), the application must contain a statement of compliance with NEPA.

Additionally, it should be noted that other environmental or permit laws and regulations may also apply, necessitating prior approvals by other agencies. Reference should be made to any applicable MOU, or other agreement, between FHWA and the Controlling Agency to determine the obligation, if any, of FHWA to furnish required environmental documentation.

#### 1.6 REQUESTING LETTER OF CONSENT TO EFFECT TRANSFERS (Step 3)

(a) The FHWA Division, or the State DOT through the FHWA Division, initiates the necessary correspondence with the Controlling Agency to request concurrence with transfer of the lands or interests in land requested by the State DOT. Alternatively, the State DOT may initiate the transfer process with the Controlling Agency directly. In such case, the State DOT should provide FHWA notice of such fact, together with copies of all accompanying documentation. In either event, the Controlling Agency should be provided a letter containing the following information in order to respond to the FHWA or State DOT request:

- The fact that the State DOT has submitted an application pursuant to Section 107(d) or 317 for the transfer of lands or interest in lands required for a Federal-aid or Federal-aid eligible, highway project.

- The FHWA's determination that the lands or interests in lands requested by the State DOT are reasonably necessary for the project.
- The recognized presence of any abutters' rights or easements which may interfere with access or other restrictions regarding the requested right of way.
- A brief description of the estate or interest in the land requested for transfer.
- The FHWA's request that the Controlling Agency concur in the transfer of the property to the State DOT and identify any conditions to the transfer to be included in the deed.

(b). Federal Land Transfers for projects on the Interstate System do not technically require the consent of the Controlling Agency, because 23 U.S.C. 107(d), unlike 23 U.S.C. 317, simply directs the Controlling Agency to cooperate with the Secretary of Transportation to effectuate the transfer. Nonetheless, it is the FHWA's practice to request consent for all Federal Land Transfers as a matter of comity.

#### 1.7 DEED PREPARATION AND REVIEW (Steps 4 & 5)

(a) After the Division reviews the Controlling Agency's response to the requested transfer, the response and any conditions identified for the transfer will be forwarded to the State DOT for preparation or, if previously drafted, for revision of the deed.

(b) The deed shall be prepared by the State DOT, include conditions required by the Controlling Agency, and comply with applicable State and local law. As required by 23 CFR 710.601(f), the deed shall include a certification by an attorney licensed to practice in the State that the deed is legally sufficient under State law. For example, in some states, the law does not require a deed to include both a legal description and a plat to be legally sufficient for the transfer of property. If the State DOT so requests, it will be sufficient for the deed to include just one of the exhibits, depending upon State requirements and those of the Controlling Agency. The deed is then forwarded to the FHWA Division for review and approval.

(c) The FHWA Division reviews the deed for adequacy and make a determination that the legal description is complete and closes, see section 1.3 above, and the parcel is within the project right of way and is otherwise necessary for the Project. The FHWA Division then prepares a package of materials to forward to FHWA Counsel for legal review. Pursuant to 23 CFR 710.601(d), the submission shall include:

- the State DOT's application package;
- an opinion from the FHWA Division that the land is reasonably necessary for the project and that the legal description and any required plats are correct,
- the FHWA's request to the Controlling Agency for concurrence in the transfer,
- the Controlling Agency's response,
- any additional items provided by the State DOT;

- the deed prepared by the State DOT with any changes suggested by the Division, and
- statement of compliance with the environmental review process.

#### 1.8 LEGAL REVIEW AND EFFECTUATION OF DEED (Steps 6, 7 & 8)

(a) When received by the FHWA Counsel, the submission is reviewed for legal sufficiency as required by the FHWA Delegations and Organizations Manual, Chapter 4, Paragraph 78. The FHWA Counsel is responsible for verifying that all determinations required by Sections 107(d) and/or 317 have been made, that the appropriate interest is being transferred, and that clauses required by 49 CFR 21.7(a)(2), 23 CFR 710.601, Part 771, Part 774, and other law applicable to the specific transfer are addressed.

(b) If the FHWA Counsel finds the deed to be legally sufficient, he or she concurs in writing.<sup>10</sup>

(c) Under the FHWA Delegations of Authority for Sections 107(d) and 317, land transfers are effectuated by the FHWA Division Administrator signing the deed on behalf of the FHWA, subject to the prior concurrence of FHWA counsel described in (b) above. This authority may not be re-delegated.

(d) The State DOT is responsible for having its appropriate management official sign acceptance of the land subject to the conditions and for recording the deed.

#### 1.9 TRANSFER PROCEDURES OF OTHER AGENCIES

(a) Certain Controlling Agencies may elect to utilize their own authority and procedures for effecting land transfers. When land transfers occur under the authority of the other Federal agency, FHWA would normally not be involved. If these authorities are in addition to the procedures involving the FHWA or are for land for a Federal-aid project, the transfer is effected in a manner acceptable to the FHWA. These agencies include Department of Defense military branches (Army, Navy, Air Force, Marines), the Department of Veterans Affairs, and others. See Section 1.9, *infra*. In those instances, a State DOT or its nominee may work directly with a Base Commander or local administrator to process the requested land transfer.

(b) When authorities other than those under title 23, United States Code, are used, the State DOT should inform the FHWA Division of the land transfer. For material sites, a Controlling Agency may grant a permit, license, right of entry, or similar document to the State DOT, with conditions, in lieu of granting a land transfer. This procedure is acceptable for temporary uses, such as for material sites<sup>11</sup> but not appropriate where permanent highway right of way is required, in which case a permanent interest in the property, by deed of easement or fee, should be pursued in accordance with the process set forth in this manual or the process of the Controlling Agency, if applicable. The legal

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<sup>10</sup>Also see footnote 8 and Appendix 4

<sup>11</sup> Appendix 8

sufficiency of such documents are governed by state law and State DOT should consult with its counsel as necessary to ensure that it is adequate for the intended purposes.

(c) The land transfer procedures of various Controlling Agencies are discussed below and in the [FHWA Program Development Guide](#) at Chapters 14 and 16. The agencies listed here are the ones FHWA Divisions most often deal with.

(d) The land transfer process shall be in compliance with any applicable MOU, or other agreement, between the State DOT and the Controlling Agency and/or FHWA. BLM and the Forest Service, for example, often have agreements with State DOTs that specify additional Federal Land Transfer procedures for a geographic area. It is recommended that consideration be given to development of such agreements, consistent with applicable Federal and State law, with Controlling Agencies within the geographical area of the State DOT.

#### (I) DEPARTMENT OF AGRICULTURE

Forest Service. The Forest Service is responsible for protection and multiple use management of National Forest System lands and resources. Requests for transfer of property pursuant to 23 U.S.C. 107(d) or 317, for which it is the Controlling Agency, must be consistent with the [1998 Memorandum of Understanding between the Forest Service and the FHWA](#),<sup>12</sup> as amended, or such superseding MOU, or other agreement, as may be in effect at the date of the request. The State DOT may alternatively negotiate directly with the Forest Service to obtain the needed right-of-way pursuant to 43 U.S.C. 1761 or 16 U.S.C. 532-538.

The Forest Service authorized officer administering the needed land should be contacted early by the State DOT and FHWA Division to discuss the environmental review and, later, the transfer and, if appropriate, an interim right of entry. After FHWA's concurrence, the State DOT's application is submitted, if agreed upon, by the FHWA Division to the designated representative of the Forest Service, for concurrence in, and any conditions of the transfer. The Forest Service may also specify stipulations for its concurrence in the transfer.<sup>13</sup> If so, it will secure from the State DOT, directly or through the FHWA Division, the State DOT's agreement to any required stipulations. The Forest Service then sends a letter of concurrence to the State DOT, through the FHWA Division, agreeing to an imminent appropriation and transfer, and, if applicable, granting an interim right of entry.

These transfers of interests in Forest Service lands are by Highway Easement Deed, which generally include previously agreed-upon stipulations, terms and conditions. Other stipulations, terms and/or conditions are permissible if concurred in by the

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<sup>12</sup> Appendix 9

<sup>13</sup> Stipulations are requirements imposed on the State DOT or its nominee by the Controlling Agency that do not run with the land and are not included in the deed. The Forest Service Handbook defines "stipulations" (FSH 2709.12, s. 21.22) and confirms that while intended to be binding on the State DOT, they are not included in the Highway Easement Deed.



FHWA, Forest Service and State DOT.

## (II) DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs. Applications for right of way or interests in land on Indian lands are submitted directly to the Bureau of Indian Affairs (BIA) by the State DOT in accordance with 25 CFR Parts 162 and 169. The transfer is normally effected by the BIA pursuant to its own statutory authority. For purposes other than those specified in 25 CFR Parts 162 and 169, transfers are made under the provisions of Sections 107 (d) and 317.

Section [162.601 of 25 CFR](#) provides, in part, that the Secretary of the Interior may grant leases on Government land and on individually owned Indian land on behalf of persons who are not of sound mind, orphaned minors, undetermined heirs; on unused lands of heirs or devisees who have not been able to agree upon the terms of a lease; and on an Indian's land when the Secretary has written authority to execute leases on the Indian's behalf; and on an Indian's land whose whereabouts are unknown. Applications for right of way across such lands should be submitted by the State DOT to the BIA to effect the transfer.

Section 169 of 25 CFR has procedures under which rights-of-way over Government, tribal, and individually owned land may be granted. Consent of the tribe or allottee may be required and 43 CFR Part 7 (Protection of Archaeological Resources) may apply. If such resources are present, the BIA issues a permit and obtains the consent of the Indian landholders.<sup>14</sup>

Bureau of Land Management. The Bureau of Land Management (BLM) administers the majority of Federal lands (e.g., non-military Federal lands that are not part of a National Park, Monument, Wildlife Refuge, National Forest System, National Wild and Scenic Rivers System, or Western States water project). BLM jurisdiction may extend to certain mineral rights (oil, gas, coal) within the Federal land. It is therefore important to assess whether there needs to be coordination with BLM even where a title evaluation suggests another Federal agency is the Controlling Agency. See P.L. 94-579.

The State DOT submits its request to the FHWA Division which, by agreement, sends it to BLM.. The transfer is effected pursuant to Title 23 transfer provisions and the [1982 Interagency Agreement between BLM and the FHWA](#),<sup>15</sup> and takes the form of a Highway Easement Deed between the State DOT and the FHWA.<sup>16</sup> This procedure may not be appropriate for temporary use of land controlled by BLM.<sup>17</sup> State DOTs

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<sup>14</sup> For further guidance in issues involving acquisition of interests over Native American lands, see "The Acquisition of Easements over Native American Lands for Transportation Projects" at: [www.fhwa.dot.gov/realestate/acqneasindex.htm](http://www.fhwa.dot.gov/realestate/acqneasindex.htm).

<sup>15</sup> Appendix 10

<sup>16</sup> Appendix 11

<sup>17</sup> Temporary uses such as the use of a site for construction equipment, maintenance, or for gathering borrow materials may be more conducive to a permitting process, rather than with a recorded deed and land transfer.

may also negotiate directly with BLM to obtain the needed right-of-way pursuant to 43 U.S.C. 1761.

The BLM has informed FHWA that, as the steward of certain public lands, a request must identify the specific land parcels and their uses. The BLM typically will not grant an overall request to use BLM lands for borrow material without identifying the location and quantity of material to be used unless indicated by prior agreements. Under 30 U.S.C. 601, BLM may, in its discretion, transfer material without charge.

Bureau of Reclamation. The Bureau of Reclamation (BOR) has jurisdiction over certain other Federal lands associated with water resource projects, in 17 western States. In transfers involving these lands, the request is submitted to the BOR, which, in some instances, coordinates the transfer decision with the BLM. The BOR should coordinate these transfers as the Controlling Agency unless it defers to BLM for a decision and subsequent transfer through the Division on behalf of BOR.<sup>18</sup> For further information, please refer to the BOR website, [www.usbr.gov](http://www.usbr.gov).

National Park Service. Application for right-of-way or interests in lands administered by the National Park Service (NPS), submitted pursuant to Section 107(d) or 317, are reviewed and processed in the normal manner as described in this manual and 36 CFR Part 14. Lands within the Wild and Scenic Rivers System administered by the National Park Service may be transferred pursuant to 16 U.S.C. 1284 (g).

Fish and Wildlife Service Applications for rights-of-way or interests in lands under the control and supervision of Fish and Wildlife Service are submitted to the appropriate Regional Director of the Fish and Wildlife Service in accordance with the procedures set out in 50 CFR Part 29, Land Use Management, Subpart B.

Part 29 provides that where the land administered by the Secretary of the Interior, through the Fish and Wildlife Service, is owned in fee by the United States and the requested right of way is compatible with the objectives of the area, a permit or easement may be granted by the Regional Director. Generally, an easement or permit will be issued for a term of 50 years or for as long as it is used for the purpose granted. Both the statute (16 U.S.C. 668dd(d)(2)) and regulation (29.21-7(a)) require payment of a use and occupancy fee at fair market value of the property interest conveyed. The FWS has authority to waive the fee or accept compensation by other means, and has done so on occasions where the project benefited refuge lands.

Also, transfer agreements should recognize that unless otherwise stated, no interest granted gives the grantee any right to use or remove any material, earth, or stone except for the construction needs within the termini of the project in which the material is located.

### (III) MILITARY DEPARTMENTS

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<sup>18</sup> See BLM/BOR Memorandum of Understanding at Appendix 12.

(a) The military departments have statutory authority for granting rights-of-way over lands under their jurisdiction (10 U.S.C. 2668). This law provides for the granting of easements instead of fee estates. These departments may prefer to transfer an easement under their own authority.

Applications for transfers affecting lands under the control of the Army or the Air Force are submitted by the State DOT, after consultation with the Division, directly to the installation commander and to the District Engineer, Corps of Engineers pursuant to 10 U.S.C. 2668. As to Navy lands, the application is sent to the Public Works Officer of the Naval District involved. Where a satisfactory approval from the Navy is not readily obtained, the State DOT should submit its application, pursuant to Section 107(d) or 317, to the Division.

(b) Where the Controlling Agency of a base is in the process of closure of the facility pursuant to BRAC, a different process may be appropriate or required. Under BRAC the military is delegated the disposal activity of GSA. While typical requests for transfers, to the extent associated with an operational facility, are addressed through an easement, in cases of a facility undergoing a base closure, a fee interest should be sought, and may often be available as there is a desire on the part of the Controlling Agency to not retain reserved rights.<sup>19</sup>

Usually, the BRAC process establishes a Local Reuse Authority (LRA) that develops a plan for how the lands will be used and for what purpose and by whom. However, the disposition process that follows thereafter may differ for each base.

It is important that the FHWA Division, and the State DOT not ignore a BRAC notice. Upon receipt of such a notice, a timely assessment and response should be undertaken to address the transportation needs, if any, of the State DOT to acquire any portion of the property proposed for disposition.

The State DOT should communicate as early as possible with the appropriate representatives of the base and/or LRA regarding interest in base lands for highway improvements. In addition to the property interest often being different from that available for transfer within an operating base, the conveyance documentation will also likely differ in other respects.

Some items to keep in mind on BRAC Federal Land Transfers are:

- The deed must contain numerous environmental and other clauses required under BRAC, .
- The military agency may not want to retain a reversionary interest and may want to assign its reversionary interest to another party during its disposition of the base. Such consideration is up to the military agency. The FHWA's policy is to

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<sup>19</sup> In this instance, consideration should be given to potential exposure resulting from the environmental condition of the property (see Bullet No. 3 below)

include a reversionary clause to accomplish the requirement of Section 317(c) in both Sections 317 and 107(d) transfers, though 23 CFR 710.601(h) does provide for the possibility of alternative arrangements. The FHWA counsel should be consulted for assistance.

- If transferred in fee, consideration must be given to provisions of Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9620(h)(3). Such provisions require certain notice and actions if the land to be transferred from federal to non-federal ownership contains, or was the site for storage of, hazardous substances as specified in the Act.

The BRAC process provides for "public benefit conveyances" and "economic development conveyance" which terminology is not necessarily consistent with that associated with transfers of easements in operating bases for highway purposes under the usual Federal Land Transfer process. These matters should be addressed in negotiation of the conveyance documents. As examples, included are sample conveyance documents for acquisition of fee interest of property needed for highway purposes from bases undergoing closure pursuant to the Act referenced above.<sup>20</sup>

BRAC provides a special opportunity for appropriation of Federal land for transportation use. It requires special considerations in deed processing and wording. It is important to note that if Section 107(d) or 317 is used to transfer the land, then the land is transferred under such FHWA statutes and not under BRAC, but rather in consideration of, and coordination with BRAC.<sup>21</sup>

#### (IV) UNITED STATES POSTAL SERVICE

The United States Postal Service (USPS) will generally negotiate directly with the State DOT regarding land transfer issues associated with USPS land. If an issue arises regarding the payment of compensation for USPS land transferred to a State DOT for a Federal-aid highway project, it is FHWA's position that such transfers should generally not require compensation, although exceptions may be made by FHWA headquarters.<sup>22</sup> Under the authority of 39 U.S.C. 411, reimbursement is not a required condition. See also Subpart 1.11(c). Unusual issues related to the transfer of USPS lands should be referred to the FHWA Counsel.

#### (V) VETERANS ADMINISTRATION

Under 38 U.S.C. 8124, the Veterans Administration (VA) is authorized to grant to any State, or political subdivision thereof easements in and rights-of-way over lands under the VA's supervision and control, with such terms and conditions as it deems advisable. Where the VA elects to grant an easement under its authority, the State DOT should

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<sup>20</sup> Appendix 13

<sup>21</sup> In the event that issues arise, it is suggested that you consult with HEPR and FHWA Counsel

<sup>22</sup> But see Appendix 14

submit its application to the VA.

## (VI) GENERAL SERVICES ADMINISTRATION

Special conditions may apply as in 41 CFR 102-75, Real Property Disposal, in general, and specifically in Subpart B, Utilization of Excess Real Property, and Subpart C, Surplus Real Property Disposal.<sup>23</sup> The General Services Administration may require the FHWA and the granting agency to agree on certain transfer conditions, such as the following: "In the event of a reversion, the State DOT shall be responsible for the protection and maintenance of the subject premises from the date of notice of intent to revert title until such time as a quitclaim deed or other approved document of transfer revesting title in the United States of America is recorded." GSA has authority to transfer land directly pursuant to 40 U.S.C. 319.

## (VII) DEPARTMENT OF JUSTICE

The Attorney General may transfer rights-of-way pursuant to 43 U.S.C. 931(a).

### 1.10 FORMS OF TRANSFER

(a) Transfers made under the provisions of Sections 107(d) and 317 need not be in any particular form so long as they comply with statutory and regulatory conditions unless otherwise provided in an agreement with the Controlling Agency. Section 107(d) provides for the FHWA to make such arrangements as may be necessary "to give" the State DOT, or its nominee, constructing the project adequate rights-of-way and control of access from adjoining lands. Section 317(b) is equally broad, although it does not specifically mention control of access. It recites that the "land and materials may be appropriated and transferred to the State transportation department, or its nominee, for such purposes and subject to the conditions so specified."

(b) The deed is prepared by the State, or the military unit with jurisdiction in the case of a BRAC-coordinated transfer, and certified by an attorney licensed within the state as being legally sufficient, as required by 23 CFR 710.601(f). Such attorney is typically an attorney working for the State DOT or for the State Attorney General, although qualified outside counsel may be used. It is recommended that the deed, at a minimum, include the following:

- The statutory authority under which the transfer is authorized.
- The identity of the Federal-aid, Interstate highway, or other project involved.
- A determination that the lands or interests in lands described therein are reasonably necessary for the project.
- A statement limiting the use to the transportation purpose for which the land is determined to be necessary.
- A statement that the agency having jurisdiction over the land has concurred in

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<sup>23</sup> See Appendix 15 GSA Checklist, Report of Excess Real Property, and Title Report.

- An appropriate granting clause, specifying such things as: fee or easement, temporary or permanent, purpose/use for which the land is being transferred, etc.
- A certification by an attorney licensed in the state that the deed is legally sufficient under state law.
- Provisions addressing compliance by Grantee with Civil Rights requirements. See 49 CFR 21.7(a)(2).
- A clause for reversion in the event that the property is no longer needed or being utilized for the transportation purpose for which it is being transferred, and also provides that the Grantee shall return land in a condition acceptable to the Controlling Agency. The deed conditions or stipulations may also specify acceptability.
- A provision prohibiting the Grantee from assigning or transferring any interest in the property without the prior written consent of FHWA.
- A clause setting out the time limit for initiation of construction no later than the time limit set pursuant to 23 CFR 630.112(c)(1).
- All conditions required by the Controlling Agency and agreed upon by the FHWA Division and State DOT.

(c) Reference should be made to applicable terms and conditions of any MOU with the Controlling Agency if such MOU affects Federal land transfers.

(d) It is also recommended that there be a provision specifying that if the land is used for purposes other than for which it is determined necessary, it shall revert to the Controlling Agency. Such provision should further require that the State DOT be responsible for returning it in a condition acceptable to the Controlling Agency prior to or within a reasonable time frame after reversion and provide that upon request the State DOT shall execute and record an instrument terminating the easement in a form that would be effective under applicable State law.

(e) The conveying instrument for grants affecting lands is typically a highway easement deed, wherein the United States of America, acting through the FHWA, appropriates and transfers to the State DOT, the lands or interests in land described therein, subject to any specified conditions.<sup>24</sup> The deed concludes with the FHWA Division Administrator's signature and the State DOT's acceptance of the transfer and certification that it accepts the right of way or other interest conveyed and agrees to abide by the conditions of the deed.

(f) Generally, the legal description, Exhibit "A," and the plat, Exhibit "B," will be attached to, and made a part of, the deed. In some jurisdictions, where the plat is not required, the instrument is legally sufficient and entitled to be recorded as a land record of the State, if a metes and bounds description, or other acceptable form of legal description is used. In other jurisdictions, a plat, citation to a recorded subdivision plat or

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<sup>24</sup> See footnote 20

other land map will suffice as the description, if the method used meets the requirements of State law.

(g) To protect the integrity of the highway system, the highway easement deed should include adequate stipulations to ensure the grantee has sufficient rights to construct, operate and maintain the transportation improvement in perpetuity.

(h) A subsequent transfer or assignment from the State DOT or its nominee to a third party requires prior written approval from FHWA. Where a request is received, the FHWA Division staff should forward the request with a recommendation to the FHWA Counsel to determine whether the transaction would remain consistent with Sections 107(d) and 317 (i.e., will the property continue to be operated and maintained as part of a Federal aid highway or, if a strong Federal interest exists, a Federal-aid eligible highway). Also, consideration should be given to the terms of the proposed transfer including but not limited to, the proposed use, protection afforded to the Federal interest, and acceptance of original terms and conditions. Any concerns should be raised to headquarters or the FHWA Counsel. The Controlling Agency should be provided notice and an opportunity to comment before FHWA approves an assignment. The transfer document must expressly include assignment of all conditions of the deed.

(i) The deed should include incorporation language with regard to any attachments to the deed (e.g. "Exhibit A, attached hereto and made a part hereof").

#### 1.11 CONDITIONS OF TRANSFER IMPOSED BY CONTROLLING AGENCY

(a) Under the provisions of Section 317(b), transfers of lands are subject to conditions which the Controlling Agency "deems necessary for the adequate protection and utilization of the reserve." If the Controlling Agency has not responded to the State DOT or FHWA Division within a period of 4 months after the filing of an application for the appropriation of lands, the FHWA Division may appropriate and transfer such lands to the State DOT without waiting for further response. The request for concurrence of the Controlling Agency should include notification of such possibility. All effort should be made to coordinate with the Controlling Agency before effecting a transfer and the FHWA Division should expressly notify the Controlling Agency of the intention to transfer the land at the expiration of the 4-month period prior to initiating a transfer.

(b) The standard practice of the FHWA is to concur in all reasonable conditions of transfer, unless redundant or inconsistent with other standard FHWA provisions. For example, a requirement that the State convey to the United States comparable lands might be deemed reasonable if the substitute lands are essential to enable the agency presently occupying the land to carry out its functions. If substitute lands are not required, but requested solely as compensation, the condition is not considered reasonable. Other conditions, as further described below, may involve providing payment of compensation or functional replacement of improvements. In such events, it is suggested that, where appropriate, the interest in the property described in the transfer request be a fee simple, subject to a reversion interest.

(c) It has long been the policy of FHWA that transfers are generally without the payment of compensation. This policy is supported by an opinion dated as far back as 1947, see Appendix 16, when the then Acting Attorney General stated "I concur in the conclusion of the General Counsel of the War Assets Administration that transfer of the land without monetary consideration is authorized by Section 17 of the Federal Highway Act...."<sup>25</sup> FHWA's position is reflected in 23 U.S.C. 101(b)'s policy statement that "it is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century." However, FHWA recognizes that some Controlling Agencies may have statutory authority or be subject to a requirement to obtain compensation in the form of fees for certain costs associated with land transfers, such as for processing, monitoring, and rent or fair market value.<sup>26</sup> State and local governments are exempted or may be waived from many fees if certain conditions are met (e.g.- BLM, FWS, and FS regulations contain exemptions and/or waivers for State and local governments, with varying degrees of agency discretion, when the transfer is for noncommercial uses or benefits the general public). Where exemption from or waiver of fees is not applicable, reasonable fees may be paid, consistent with applicable statutes and regulations, and any agreements between a Controlling Agency, the FHWA, or a State DOT. If the highway project is intended to improve access to or otherwise benefit the controlling agency's property (e.g., the majority of projects funded under Chapter 2 of title 23), the value of such improvements should be deducted from any fees that are paid.

(d) Various Federal or quasi-Federal agencies, such as the Tennessee Valley Authority or Bonneville Power Administration, may be required to receive compensation because they have fiduciary responsibilities to bondholders or other creditors or because funding of operational costs may be dependent, in whole or in part, on revenues received from real estate assets. In these circumstances, compensation may be a proper condition of transfer, if no other arrangements or conditions can be negotiated.

(e) A Federal agency is entitled to compensation for those appurtenances on its facilities that are to be removed or destroyed in connection with the transfer of its lands. Thus, a Federal agency could impose as a condition of transfer that the State provides substitute land and/or facilities (if any) comparable to those taken in conjunction with the transferred land. See paragraph (g) infra re: functional replacement. However, pursuant to 23 CFR 710.509 the substitute land and/or facilities must be essential for the continued operation of the remaining lands according to the purpose for which the land was reserved to the Controlling Agency. See paragraph (b) supra. The FHWA may concur in such a condition, provided the substitute land and/or facilities do not include an enhancement of the existing facilities. The Controlling Agency is to assume the cost of any enhancements or betterments.

(f) In calculating the value of facilities that must be replaced, there should be a deduction for the accrued depreciation of the old facility. When a satisfactory arrangement cannot be achieved with the Controlling Agency, the matter should be referred to FHWA Counsel. A military department may request that the State DOT pay the entire cost of replacing a facility (without enhancement or depreciation), since the department may not

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<sup>25</sup> Appendix 16

<sup>26</sup> See, for example, Appendix 19.



be able to use funds for construction without specific Congressional approval. Then the State DOT may agree to pay the replacement cost when there is a compelling need for the highway construction project at that location.

(g) Functional replacement of improvements may be required, if appropriate, under the circumstances. The costs of functional replacement incurred by the State DOT in connection with a Federal land transfer may be eligible for federal reimbursement as a cost of the Project. See 23 CFR 710.509. Functional replacement, if appropriate and requested by the Controlling Agency, is in lieu of payment in damages for the property interest being transferred.

(h) A review by the U.S. Property Review Board or the Federal Real Property Council is not required<sup>27</sup>. By letter of March 10, 1983, the Assistant to the President for Policy Development advised FHWA that highway conveyances under Sections 107(d) and 317 are exempt from review by the U.S. Property Review Board, and as such are not "public benefit discount conveyances" as described in Executive Order 12348 of February 25, 1982.<sup>28</sup>

(i) The Controlling Agency often includes a condition pertaining to reversion. Of course, a reversion, if the land is no longer needed by the State DOT, is specified in paragraph (c) of Section 317. See discussion in Subparts 1.13(a) and 1.14(i) and model language in 1.14(j). The reversionary clause should be a standard part of a transfer deed, whether or not included in the Controlling Agency's conditions. The Controlling Agency may require that, prior to reversion, the State DOT contact it for concurrence in the acceptable condition of the lands. This concurrence may be in the form of a written notification to the State DOT and presented to the Division at, or prior to, notification of the Division that the lands are no longer necessary for the intended purpose of the transfer.

## 1.12 DELEGATIONS

(a) Certain functions, powers and duties vested in the Secretary of Transportation under title 23, United States Code, have been delegated to the Federal Highway Administrator, with authorization for successive delegations, pursuant to the authority of 49 U.S.C. 104 and 322(b), 49 CFR 1.4 and 1.48. Sections 107(d) and 317 have been specifically delegated to the Administrator by 49 CFR 1.48(c)(17) and (b)(3), respectively. Reservations and laws not delegated are contained in 49 CFR 1.44.

(b) Delegations of authority from the FHWA Administrator to subordinate officials are

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<sup>27</sup> The U.S. Property Review Board was created by Executive Order 12348 on February 25, 1982. Executive Order 12512 of April 29, 1985, rescinded EO 12348. The Federal Real Property Council was created by Executive Order 13327, "Federal Real Property Asset Management," signed by President George W. Bush on February 4, 2004. Executive Order 13327 states: "The policy of the United States is to promote efficient and economical use of America's real property assets and to assure management accountability for implementing federal real property management reforms."

<sup>28</sup> Appendix 17

contained in the FHWA Delegation of Authority and Organizational Manual, FHWA Order M1100.1A, para. 12. As provided therein, the Division Administrator has authority to execute the deed, and such authority may not be re-delegated.

### 1.13 STATUTORY AUTHORITY

(a) Section 317 set out below, vests in the Secretary of the U.S. Department of Transportation authority to transfer to a State DOT, or its nominee, any part of the lands or interests in lands owned by the United States, upon a determination that the property is reasonably necessary for the right of way, or as a source of materials for the construction and maintenance of a highway constructed on a Federal-aid system, or under the provisions of Chapter 2, Other Highways, of title 23, United States Code. Prior to recodification, section 317 was located at 23 U.S.C. 18. The authority can be traced back to section 17 of the Federal Highway Act of 1921, 42 Stat. 212, 216 (11/9/1921).

“Section 317. Appropriation for highway purposes of lands or interests in lands owned by the United States

(a) If the Secretary determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(b) If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State transportation department, or its nominee, for such purposes and subject to the conditions so specified.

(c) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State transportation department to the Secretary and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated.

(d) The provisions of this section shall apply only to projects constructed on a Federal-aid system or under the provisions of chapter 2 of this title.”

(b) The above authority was later supplemented by Section 107(d), below, granting the authority to transfer right-of-way to a State, including control of access, over lands and interests in lands owned by the United States, required for Interstate System projects, and directing other Federal agencies to cooperate with the Secretary in this connection.

#### Section 107. Acquisition of rights-of-way--Interstate System

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection.

(c) There is case law finding that the provisions of sections 107(d) and 317 must be read together; thus, the concurrence of the Controlling Agency should be sought for transfers pursuant to 107(d) even though only 317 specifically requires seeking concurrence. See U. S. v. 10.69 Acres of Land, More or Less, in Yakima County, 425 F.2d 317, 318-21 (9<sup>th</sup> Cir. 1970).

#### 1.14 STATUTORY INTERPRETATIONS AND PRECEDENTS

(a) The FHWA Office of the Chief Counsel has had occasion to interpret various provisions of Sections 107(d) and 317. Representatives of other Federal agencies have been consulted on some of the interpretations. A number of these interpretations have been referenced earlier in sections of this manual. Others are as follows.

(b) In Section 317(a), the phrase "lands or interests in lands owned by the United States" includes any interest in land owned by the United States, including interests appurtenant to privately owned property. Examples include a leasehold interest, a reversionary interest, a mineral interest, an easement right in, on and below the surface and a right to control or restrict the use of land. These interests may be relinquished or terminated under the cited statutory authority, for highway purposes.

(c) The clause "for the right-of-way of any highway" in Section 317(a) is interpreted to mean "with respect to," or "in connection with," or "with regard to" an eligible highway. Accordingly, lands required as a maintenance site, stockpile site, or for scenic purposes, or for other construction projects and highway maintenance after the completion of the project, although not contiguous to the project, may be transferred under Section 317(a).

(d) The phrase "such highway adjacent to such lands or interests in land," appearing in the same section, is construed to mean "in the vicinity of" or "in the general area" of such land. Thus, land required as a source of borrow materials need not be contiguous to or actually abut the highway project. The land parcels may be, and very often are, located a considerable distance away from the project. This interpretation is supported

by a decision of the Court of Appeals for the Ninth Circuit. The Court said that "adjacent to such land" must be given a broad interpretation and that 8 to 10 miles from the construction would be adjacent to, as contemplated in any reasonable interpretation of the statute. (Southern Idaho Conference Ass'n. of Seventh Day Adventists v. United States, 418 F.2d 411, 416 (9th Cir. 1969)).

(e) The words "as a source of materials" include either transfer of land outright for continuous and unlimited withdrawal of borrow material or the transfer of the right to enter upon the land for the purpose of extracting a specific quantity of materials during a period of time. However, in the case of BLM lands, the quantity of material needed should be specified so that BLM may plan other uses of the site. As a condition of transfer, BLM may seek to require the State DOT to maintain the site even though other entities have been granted use of the site and have caused the need for repair or maintenance. In such event, it is suggested that the terms of the condition be reviewed and negotiated to the extent necessary to ensure that it is reasonable.

(f) In Section 317(b), the words "under conditions" appearing in the clause "shall have agreed to the appropriation and transfer under conditions" do not include a condition whereby payment of a monetary consideration is required for the lands to be transferred. The following phrase "adequate protection and utilization of the reserve" can reasonably be interpreted to mean "adequate protection and utilization of the remainder lands". Under this interpretation, a monetary consideration may be required where a portion of a housing project or other facility is being transferred and such transfer will adversely affect the Controlling Agency's investment in the remainder property. The Controlling Agency should not be deterred in its mission or suffer a harm, without compensation, because of the transfer. However, any benefit from the road project should be accounted for in the compensation.

(g) The phrase "such land and materials may be appropriated and transferred" includes the conveyance of a determinable fee interest in the land, or such lesser interest as may be required by the State DOT. This would include a highway easement for highway purposes.

(h) The phrase "or its nominee," appearing at the end of Section 317(b), where lands may be transferred to the State DOT, has been interpreted to include an official authorized by State law, another State agency, a city, town, county, or other political subdivision of the State. The State DOT should identify its nominee in writing, either programmatically or on a project-by-project basis. In the event the proposed nominee is a private entity (e.g., when a public-private partnership is involved), the FHWA Division should consult with FHWA Counsel to confirm whether the requested transfer is consistent with Section 107(d) or 317.

(i) Section 317(c) provides that if, at any time, the need for such lands or materials no longer exists, notice shall be given by the State DOT to the FHWA. Further, there shall be an immediate and automatic reversion to the transferor agency. A quitclaim deed or notice, suitable for recording, shall be prepared by the State DOT or its nominee, stating

that the need for the lands or materials no longer exists. Moreover, the FHWA's interpretation of Section 317(c) is that such reversion is immediate and effective when the land is no longer used for highway purposes, even if the State fails or refuses to give notice of that fact. Notwithstanding Section 317(c), GSA may require compliance with its regulation, 41 CFR Part 102-75, as noted in Subpart 1.8(d), *supra*. (23 CFR 710.601; Federal Aid Policy Guide).<sup>29</sup> Some States do not recognize an immediate reversion and the deed might specify that grantee shall quitclaim the land back to the Controlling Agency.<sup>30</sup> In all cases, the State DOT shall cooperate with the Controlling Agency to effectuate a reversion consistent with 23 CFR 601(h) and any applicable MOUs or state law requirements.

(j) With respect to the possibility of a reversion, a clause which may be used in an instrument of transfer and which is required in General Service Administration (GSA) conveyances is as follows:

“In the event of a reversion, the acquiring agency [the State DOT] shall be responsible for the protection and maintenance of the subject Premises [land transferred] from the date of notice of intent to revert title until such time as a quitclaim deed revesting title in the United States of America is recorded.”

In drafting the deed, it is important to avoid conflicting provisions. The reversionary clause may require revision to be compatible with this GSA clause.

(k) Section 317 authorizes the transfer of any lands or “interests in lands” owned by the United States. Since the term “interest in lands” includes the control of access from adjoining lands, a transfer effected under Section 317 may properly include control of access to, from, and between the land transferred and remainder lands of the United States.

(l) Section 317 provides that the lands and materials transferred shall immediately revert to the agency from which the land was appropriated if at any time need for such property no longer exists. Since Section 107(d) has no such requirement, lands transferred for an Interstate project may possibly be given to the State outright, although this has not been done. Since Section 107(d) states that “the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary,” it is the policy of the FHWA to include the standard reversionary provision in all Section 107(d) transfers. This policy fosters a consistent relationship with transferor agencies, whether the transfer is effected under Section 317 or Section 107(d). However, with the use of Sections 317 and 107(d) in conjunction with military base closures under BRAC, title 23 CFR 710.601(h) was amended to provide

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<sup>29</sup> But see Southern Idaho Conference Assn'n of Seventh Day Adventists v. United States, *supra*, where land reserved for a material site under 23 U.S.C. 317, remains a material site until it is specifically canceled by the Secretary.

<sup>30</sup> The State counsel certifying the deed should be aware of these matters and advise FHWA if the language stating an immediate reversion is included in the deed, but not recognized under State law.

for alternative arrangements to a reversion.

(m) The provisions of Section 317 authorize the transfer of borrow material sites required for the construction or maintenance of projects on a Federal-aid system. Section 107 (d), applicable only to projects on the Interstate System, does not specifically authorize the transfer of borrow materials sites. However, since the provisions of Section 317 are also applicable to Interstate highway projects, the authority contained in both sections of the statute may be relied upon in effecting the transfer of borrow material sites required for such projects.

(n) It is the FHWA's position that Sections 107(d) and 317 were specifically enacted for highway purposes. Thus, these statutes take precedence over more general statutes, which may be considered inconsistent.

#### 1.15 ANALYSIS OF SECTIONS 107(d) AND 317

For purposes of comparison, the provisions and requirements of Sections 107(d) and 317 are summarized in a chart included as Appendix 18 of this manual. Column 1 lists the essential elements appearing in either or both of the sections. Column 2 sets forth the precise requirements of Section 107(d), and Column 3 sets out the precise requirements of Section 317. The chart may be used as an overall checklist during the preliminary review of a submission. For example, Item d, Column 3 discloses that a non-Federal-aid eligible project on a State highway system or on a county road would not come under the purview of Section 317. Also, Item k, Column 3 shows that the reversionary interest of the agency from which the interest in land was appropriated is mandatory under Section 317 transfers, but optional with respect to Section 107(d) transfers.

#### 1.16 LEGISLATIVE HISTORY

##### (a) Section 317

- Although sparse, the legislative history of Section 317 does provide clues to the meaning of such phrases as "appropriation of such land," "purposes for which such lands and interests have been reserved," "appropriation and transfer," and "protection and utilization of the reserve." The current Section 317 is a revision and recodification of Section 17 of the Federal Highway Act of November 9, 1921 (42 Stat. 212).
- Paragraph 1 of Section 17 stated that if the Secretary determined that any part of the "public lands or reservations of the United States" was necessary for the right of way of any highway, etc., the Secretary could file with the Secretary of the department supervising the administration of such lands or "reservations" a map showing the portion of such lands which it desired to "appropriate." Thus, the classes of Government-owned property eligible for highway purposes under Section 17, paragraph 1, were apparently restricted to "public lands or reservations," such as unappropriated and unreserved public domain lands. This

- To clarify this ambiguity, in Section 317 Congress revised the wording of the former law, enlarged the authority vested in the Secretary and reenacted the law as revised. The revised version applies to "any part of the lands or interests in lands owned by the United States." The phrase "public lands" is omitted, however, for reasons not disclosed by the legislative history, the phrases peculiar to public domain land laws were not modified to agree with the expanded classification of property now eligible for transfer for highway purposes. It is clear, however, that any part of lands or interests in land owned by the United States, regardless of its character may be made available for highway purposes under Section 317.
- In the absence of other information, a reasonable interpretation is accorded to the words "appropriate," "appropriation," "reserve" and "reservation," so that a meaningful application of these words is possible with respect to other than public domain lands. To achieve that result, "reserve" or "reservation" is interpreted to include "remainder lands" of the United States; and "appropriate" or "appropriation" is considered equivalent to "convey" or "grant" when applied to transfers of other than public domain lands.
- The term "public lands" was discussed in a decision of the Ninth Circuit Court of Appeals. In that case, the traditional meaning of "public lands" was held to mean land subject to sale or other disposal under general laws Columbia Basin Land Protection Ass'n v. Schlesinger, 643 F.2d 585, 601-02 (9th Cir. 1981) (quoting Newhall v. Sanger, 92 U.S. 761 (1875)). The Columbia Basin court noted, "[t]his has been held to be the meaning habitually used in acts of Congress, unless a statute explicitly provides for a different meaning for the term." Id. at 602 (citing Bardon v. Northern Pacific Railroad Co., 145 U.S. 535, 543 (1892)).
- A more comprehensive description of the term, is contained in the legislative history of Public Law 85-337; 72 Stat. 27, approved February 28, 1958, pertaining to public lands withdrawals by the Department of Defense for defense purposes. (S. Rep. No. 85-857, reprinted in 1958 U.S.C.C.A.N. 2227, 2233). After defining the term generally, the Senate Report on the Bill includes the following comment:
- In its technical, legal, or statutory sense, however, the term "public lands" by itself – employed interchangeably with the term "public domain lands" – is today used to embrace vacant, unappropriated, unreserved Federal real

- As indicated in the above excerpt, the clue to the definition lies in the fact that only those lands that are open to sale or disposition under the general land laws of the United States may properly be classified as public domain lands. Thus, virtually all classes of property owned by the United States came within the purview of the statute.

(b) Section 107(d)

- The legislative history of 23 U.S.C. 107(d) is more informative. Section 107(d) is intended to supplement and expand the authority vested in the Secretary under Section 317. Here, rights of way over Government-owned lands, required for the Interstate System, are to be made available expeditiously and with few restrictions. Unlike Section 317, Congress did not include the 4-month waiting period after the filing of a request for the transfer, and a reversion is not necessarily required. When a land transfer is found necessary by FHWA, the Controlling Agency is "directed" to cooperate with the Secretary of Transportation. Moreover, Congress saw fit [in 107(d)]to include a provision whereby right of way transferred may include control of access, thereby preserving access control where the highway abuts the remainder lands of the United States.
- Section 107(d), originally enacted as section 109(d) of the Federal-Aid Highway Act of 1956 (Public Law 84-627, 70 Stat. 374, 382, June 29, 1956) was restricted to the transfer of rights-of-way over "public lands or reservations of the United States." To remove the restriction, Congress revised, codified and reenacted the law as section 107(d) of title 23, United States Code (Federal-Aid Highway Act of 1958, Public Law 85-767, 72 Stat. 885, 892, August 27, 1958). The revised version omitted the phrase "public lands or reservations of the United States," and substituted in its place "lands or interests in lands owned by the United States." Thus, similar to Section 317, the provisions of Section 107(d) are now applicable to all classes of property owned by the United States, including public domain lands, regardless of how title to the property originally vested in the United States.

- (c) The legislative histories of Sections 317 and 107(d) do not answer all questions on the meaning and intent of these sections. For instance: Is Section 317 applicable to transfers required for an Interstate project? Is Section 317 the sole authority for transfers relating to materials sources, or may Section 107 (d) be used for that purpose on Interstate projects? What significance, if any, should be



assigned to the fact that Section 317 expressly provides for the transfer of source of materials, whereas Section 107(d) is silent on the subject? Some of these questions were explored and discussed above in greater detail in Subparts 1.14, 1.15, and 1.16 of this manual. It is the policy of the FHWA that, absent good legal reasoning to the contrary, such issues should be answered in a way favorable to the mission of the Federal-aid highway program. Issues should be evaluated by the FHWA Division Administrator and FHWA Division Realty Specialist, and referred to the FHWA Counsel and HEPR, as necessary.

## Appendix 1: Key Terms

Appendix 2: April 1998 Guidance Memo

### Appendix 3: Sample Regional MOU from Arizona

The following sample MOU is intended to serve as an illustration rather than as a model. In general, MOUs will tend to address similar issues and procedures, but the details of each MOU will reflect the regulations and interests of the agencies and entities involved. An MOU must comply with all applicable laws and should accurately reflect the obligations of the parties thereunder. It is also advised that consideration be given to this manual in developing an MOU.

An excerpt of the Arizona MOU is included in the following pages – the complete document is available at:

[http://www.azdot.gov/ccpartnerships/partnering/PDF/MOU\\_AZ-931-0309\\_Amend\\_3.pdf](http://www.azdot.gov/ccpartnerships/partnering/PDF/MOU_AZ-931-0309_Amend_3.pdf)

## Appendix 4: Sample Legal Sufficiency Finding language

SECTION 4. OTHER APPROVALS

**78. GENERAL CLASSES OF FORMAL INSTRUMENTS.**

- a. **Chief Counsel.** The Chief Counsel is delegated the authority to execute for and in the name of the Administrator: (1) general classes of formal instruments creating commitments on the part of the FHWA, such as deeds, leases, and other legal documents and papers, but excluding Declarations and Amended Declarations of Taking necessary for all Federal acquisition of real property required for the Federal-aid systems, defense access roads, areas under FHWA jurisdiction, and for Federal transfer of appropriate real property, including rights-of-way and material sources over Federal land to the States; and (2) use permits and other agreements for the use of FHWA-owned real property.
- b. **Headquarters and Field.** Within their functional areas of responsibility, Associate Administrators, Chief Counsel, Chief Financial Officer, Directors of Field Services, Resource Center Director, and FLH Division Engineers are delegated the authority to enter into formal agreements with their operational equivalents in other Federal, State, and local government agencies, and nongovernmental agencies as necessary, except as reserved to the Secretary in Chapter 3 of this Manual. Exercise of this authority is subject to coordination with any other affected offices and organizations, and the concurrence of the designated legal counsel. These agreements may not establish or change Agency policy. This authority may not be redelegated.
- c. **Field.** Notwithstanding the authority delegated to the Chief Counsel in paragraph 78a above, Division Administrators and FLH Division Engineers are delegated the authority:
  - (1) to execute deeds or other instruments as required to effect the transfer of rights-of-way for highway purposes, including the control of access thereto from adjoining lands, from the FHWA to the States or political subdivisions thereof, in accordance with the Federal-aid highway laws;
  - (2) to execute deeds or other instruments effecting the transfer of excess lands, where the authority to process reports of excess lands has been delegated to the FHWA Administrator by the Secretary of Transportation, and as such may be required by directives received from the GSA;
  - (3) to execute licenses and permits required to permit the temporary use of land being administered by the FHWA; and
  - (4) to execute instruments effecting the disposal of improvements located on nonexcess lands where the authority to effect such disposal has been delegated to the Federal Highway Administrator by the Secretary of Transportation.

These authorities shall be exercised subject to prior concurrence by the designated legal counsel. This authority may not be redelegated.

Appendix 6: Sample tracking log

Appendix 7: Certificate of ROW Description Standard



Appendix 8: Sample permit/license

Appendix 9: 1998 MOU between FHWA and USFS and May 2003 Modification

Appendix 10: 1982 Interagency Agreement between FHWA and BLM

Appendix 11: Sample Highway Easement Deed

Appendix 12: Interagency Agreement between BLM and BOR

## Appendix 13: BRAC Transfer example

Appendix 14: Example of FLT with compensation (USPS in Boston)

An excerpt of an FLT with compensation is included in the following pages

Appendix 15: Reserved



Appendix 16: 1947 legal opinion

Appendix 17: White House Letter

Appendix 18: Chart comparing 317 and 107(d)

Appendix 19: USFS Guidance on Cost Recovery – CA

(See next two pages.)



United States  
Department of  
Agriculture

Forest  
Service

Pacific  
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File Code: 2730-2/7720-2

Date: April 3, 2008

Route To:

Subject: Funding Guidance for DOT Easements

To: Forest Supervisors

We work with The Federal Highways Administration (FHWA) and the California Department of Transportation (CalTrans) on numerous road projects in the region. Our ability to fund Forest Service participation in the planning, environmental review, and implementation of those projects is limited. In several cases we have been able to develop collection agreements with both agencies so that our review would facilitate meeting the project schedule. We'd like to build on those successful efforts by following the attached guidelines. The guidelines outline some basic scenarios that describe when cooperative funding may be appropriate, and when appropriated funds should be used. The guidelines also address the use of our special use cost recovery authority when applicable.

Our staff in the Regional Office will be sharing these guidelines with FHWA and CalTrans at the state level. Please consider these guidelines when you work with FHWA and CalTrans on your units. If you have any questions on these guidelines, please contact Acting Lands Special Use Coordinator Nancy Fleenor at 707-562- 8971, or Roads Operation and Maintenance Engineer Bill Fodge at 707-562-8877.

*/s/ Randall J. Gould (for)*  
DEBRA L. WHITMAN  
Acting Director, NRM

*/s/ Bill Fodge (for)*  
GEORGE KULICK  
Director, Engineering

cc: Nancy Fleenor  
Bill Fodge



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## **Guidance for Cooperative Funding and Cost Recovery Associated With U.S. Department of Transportation Road Projects**

Forest Service funding to participate in various highway projects is extremely limited. A major road project requires significant input from forest engineering and resource staff that is not covered by the Forest Service's current program allocations. The following guidelines suggest ways to use cooperative funding, minimize the impact on program dollars, and utilize the Forest Service's special uses cost recovery authority when appropriate.

### **Easements Granted by the U.S. Department of Transportation (DOT) (FSM 2731)**

The Federal Highway Administration (FHWA) and local public road authorities such as the California Department of Transportation (CalTrans) are lead agencies for interstate and other Federal Aid Highway projects authorized on National Forest System (NFS) lands by an easement granted by DOT. Local public road authorities also play a key role in the Forest Highway Program. Road easements granted by DOT across NFS lands are not special uses and are not subject to the Forest Service's cost recovery regulations. The Forest Service participates as a cooperating agency in environmental analysis for the road project, issues a letter of consent for the proposed project, and monitors project implementation to ensure Forest Service stipulations included in the easement are met. In many cases, special use permits are issued for temporary occupancy of NFS lands for non-highway purposes (such as for areas where materials are stored or unloaded). Use the following guidelines to determine when cooperative funding or cost recovery is appropriate for specific projects.

**Forest Highways.** These roads are a subset of roads authorized by easements issued by DOT to local public road authorities. FHWA designates certain public roads managed by local public road authorities to be part of the Forest Highway System (FSM 7740). These roads provide a vital connection between the forest transportation system and the primary and secondary state transportation routes. Most of these roads are funded with FHWA appropriations. Like other road easements granted by DOT, easements granted for Forest Highway System projects are not subject to the Forest Service's cost recovery regulations. The general guidelines for road easements granted by DOT apply to these projects. Use HTAE funds to pay for forest highway projects if cooperative funding is not available.

**Environmental Analysis.** Cooperative funding may be appropriate if Forest Service staffs are providing resource information and document review. Without cooperative funding, Forest Service participation will generally be very limited.

**Letter of Consent.** Based on the environmental documentation prepared by the lead agency, Forest Supervisors recommend to the Regional Forester whether to consent to granting an easement for the project, and if so, the stipulations that should be included in the easements to protect NFS lands and resources. The Regional Office Lands Staff prepares a draft letter of consent for Regional Forester signature. This work should be paid for with NFLM funds.

**Project Monitoring.** Cooperative funding may be appropriate on a limited basis for Forest Service staff to review plans and monitor implementation of stipulations associated with protection of NFS lands and resources. The Forest Service is not responsible for and should not expend appropriations on administration of the construction contract.

**Special Use Permits for Temporary Use.** Applications for these associated special use permits, which are issued to CalTrans and other local public road authorities, are subject to cost recovery. Although local public road authorities qualify for a waiver of cost recovery fees, limited special use program funding may cause delays in processing the applications if waivers are granted.

