

12/06/05(1)

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Regulation U-14 changes

160

RG 95 RECORDS OF THE FOREST SERVICE

ALASKA REGION

CHUGACH NATIONAL FOREST

ADMINISTRATIVE CORRESPONDENCE,  
1909 - 1959

BOX 7 OF 13

ARC# 2580099



*Chugach*

FOREST SERVICE, REGION 10, JUNEAU, ALASKA

OFFICE MEMORANDUM

UNITED STATES GOVERNMENT

TO : FOREST SUPERVISORS

DATE: *7/12/50*

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FROM : P. D. HANSON, Regional Forester, By

SUBJECT: U-SUPERVISION, Regulation U-14

Attached is a copy of a section of the Federal Register announcing a change in Regulation U-14 regarding permits for roads and trails on national-forest land.

Section (e) formerly read: "Trails may be constructed without permit upon consent and under the supervision of a forest officer, except in the national forests of Alaska such consent and supervision will not be required." Manual has been amended to reflect this change.

*MMH*

It may be desirable to arrange for local publicity regarding this requirement particularly if such construction is a problem in your locality.

Attachment

P. D. HANSON,  
Regional Forester

By *T. S. Rollins*  
T. S. Rollins

Tuesday, May 5, 1959

FEDERAL REGISTER

3581

ner and form in which they have complied with the order to cease and desist.

Issued: April 9, 1959.

By the Commission.

[SEAL] ROBERT M. FARRISH,  
Secretary.

[F.R. Doc. 59-3761; Filed, May 4, 1959;  
8:46 a.m.]

## Title 29—LABOR

Chapter V—Wage and Hour Division,  
Department of Labor

### PART 526—INDUSTRIES OF A SEASONAL NATURE

#### Miscellaneous Amendments

On April 3, 1959 (24 F.R. 2584) the Administrator of the Wage and Hour and Public Contracts Divisions published a final determination that the storing, and drying before storage, of grain including flaxseed, buckwheat, soybeans, and rough rice in country grain elevators, public terminal and sub-terminal grain elevators, wheat flour mill elevators, non-elevator type bulk grain storing establishments, and flat warehouses constituted an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act of 1938 (52 Stat. 1063, 29 U.S.C. 207) and 29 CFR, Part 526. This determination also consolidated and revoked other seasonal industry determinations.

As a result it is necessary to editorially amend § 526.101 of 29 CFR, Part 526, to change the listings therein of outstanding seasonal industry determinations.

Accordingly, pursuant to section 3 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1002) and under the authority of section 7 of the Fair Labor Standards Act of 1938 (52 Stat. 1063, 29 U.S.C. 207), § 526.101 of 29 CFR, Part 526 is hereby amended as follows:

1. The Industry entitled "Grain, including soybeans, flaxseed and buckwheat: Storing", "Date of finding, June 13, 1941", the "Citation, 6 F.R. 2889", and the "Correction" for this Industry, "Date of finding, August 25, 1944", and the "Citation, 9 F.R. 10593" are hereby deleted.

2. The Industry entitled "Grain, including rice, flat warehousing in States of California, Washington, Oregon, and Idaho", "Date of finding, December 17, 1941", and the "Citation, 6 F.R. 6778", are hereby deleted.

3. The Industry entitled "Rice, rough southern, drying and storing including receiving", "Date of finding, September 12, 1950", and the "Citation, 15 F.R. 6197", are hereby deleted.

4. The Industry entitled "Rice, rough southern, moving to and receiving in storage", "Date of finding, August 1,

1940", and the "Citation, 5 F.R. 2758", are hereby deleted.

5. The Industry to be entitled "Grain; flaxseed, buckwheat, soybeans, rough rice: storing and drying before storage in country grain elevators, public terminal and sub-terminal grain elevators, wheat flour mill elevators, non-elevator type bulk storage establishments, and flat warehouses", "Date of finding, April 3, 1959", and the "Citation, 24 F.R. 2584" are hereby added.

(Sec. 7, 52 Stat. 1063, 29 U.S.C. 207)

This amendment shall take effect upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 29th day of April 1959.

CLARENCE T. LUNDQUIST,  
Administrator.

[F.R. Doc. 59-3773; Filed, May 4, 1959;  
8:48 a.m.]

## Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management,  
Department of the Interior

### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 1840]

[Anchorage 027871]

#### ALASKA

Withdrawing Lands Additional to Those Withdrawn by Public Land Order No. 1673 for Use of the Department of the Army in Connection With Fort Richardson

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for use of the Department of the Army for military purposes in connection with operations at Fort Richardson, and as an addition to those withdrawn by Public Land Order No. 1673 of July 2, 1958.

SEWARD MERIDIAN

T. 14 N., R. 2 W.

Sec. 19, lot 1, that portion lying south of the Alaska Railroad right-of-way.

2. The aggregate area of the lands described in Public Land Order No. 1673 as "1,401 acres" is corrected to read "1,271 acres."

FRED G. AANDAHL,  
Assistant Secretary of the Interior.

APRIL 29, 1959.

[F.R. Doc. 59-3762; Filed, May 4, 1959;  
8:46 a.m.]

[Public Land Order 1841]

[California 320649]

#### CALIFORNIA

Partially Revoking the Departmental Order of May 8, 1913, Newlands Project

By virtue of the authority vested in the Secretary of the Interior by section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

The departmental order of May 8, 1913, which withdrew lands for reclamation purposes in the first form in connection with the Newlands Project, California, is hereby revoked so far as it affects the following-described lands:

MOUNT DIABLO MERIDIAN

T. 10 N., R. 19 E.

Secs. 4 and 5;

Secs. 9 to 36, inclusive.

The areas described aggregate 18,597.24 acres, of which 14,845.91 is national forest land and the remainder is non-public.

The national forest land shall, at 10:00 a.m. on June 4, 1959, be open to such forms of disposition as may by law be made of such lands.

FRED G. AANDAHL,

Assistant Secretary of the Interior.

APRIL 29, 1959.

[F.R. Doc. 59-3763; Filed, May 4, 1959;  
8:46 a.m.]

## Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

[Reg. U-14, Amdt.]

### PART 251—LAND USES

#### Permits for Roads and Trails

By virtue of the authority vested in the Secretary of Agriculture, Regulation U-14 of the rules and regulations governing the occupancy, use, protection and administration of the national forests, which constitutes § 251.5, Part 251, Chapter II, Title 36, Code of Federal Regulations, is hereby amended.

Paragraph (e) of § 251.5 is amended to read as follows:

(e) Trails may be constructed without permit upon consent and under the supervision of a Forest Officer.

(Sec. 1, 30 Stat. 35, as amended; 16 U.S.C. 551. Interpret or apply sec. 1, 33 Stat. 628; 16 U.S.C. 472)

Done at Washington, D.C. this 30th day of April 1959.

E. T. BENSON,  
Secretary of Agriculture.

[F.R. Doc. 59-3769; Filed, May 4, 1959;  
8:51 a.m.]

FOREST SERVICE

Cordova, Alaska

STANDARD FORM NO. 64

*Office Memorandum* • UNITED STATES GOVERNMENT

TO : Forest Supervisor, Chugach

DATE: September 18, 1958

FROM : John D. Grove, District Ranger

SUBJECT: U - SUPERVISION, Policy (Roads &amp; Trails)

This is in reply to your memorandum of 4/9/58 with the same designation as above.

You asked if there were any ways on the Cordova District on which automotive equipment is used but not covered by permit or authority for use.

The only road I can think of is John Goeres' which begins at 16 Mile on the Copper River Highway and ends at his mill approximately two miles away.

*MA*  
It is mentioned in the Manual NF-H5-4, Regulation U-14 that logging roads may be authorized by timber sale agreement and will not require specific special use permits. I could see nothing in the sale agreement for Goeres that mentioned a road. However, as stated in the Manual I imagine it should have been included.

Although it may not be true for my district, which is not nearly so developed, it would seem that the Forest Service should have supervision over construction of trails on nearly all other districts, particularly the Kenai.

Use on National Forests in Alaska has and will continue to increase. It is entirely possible that trails could be constructed in places where we do not want them.

*John D. Grove*

FOREST SERVICE

ANCHORAGE, ALASKA

District Rangers, Cordova and Kenai

December 29, 1954

M. E. Hardy, Forest Supervisor

0-SIGNIFICATION, Policy (Signs)

Attached for your guidance is memo from the Regional Office dated December 22.

If I read it correctly, it says that, since no right-of-way exists for highways on National Forest lands, we will follow our Forest Service policy on signs.

Review of Alaska Territorial standards indicates that our standards are as high or higher, so we will use our guidelines on size, placement, color, text, etc.

Please make such notes as you need on the attached material and forward all except your copies of RO memo and this memo as shown on routing slip, since extra copies are not available.

Enclosure  
MEHardy:mb

M. E. HARDY



3652  
**Memorandum**

U. S. DEPARTMENT OF AGRICULTURE  
 FOREST SERVICE  
 WASHINGTON 25, D. C.

*Chugach*

Circular No. U-340  
 (Supersedes No. U-332)

To : Regional Forester , All Regions

Date: December 3, 1958

From : Richard E. McArdle, By

Subject: U-SUPERVISION, Policy, Rights-of-Way (incl. LU)

The act of August 27, 1958 (Pub. Law 85-767; 72 Stat. 885-921; 23 U.S.C.) completely restates Federal law relating to highways. The Federal Highway Act of 1921 has been entirely repealed, the Federal-Aid Highway Act of 1956 has been partially repealed, and other laws of the United States relating to Federal assistance for the construction of highways have been repealed in whole or in part by the new law.

The act brings about a complete revision and recodification of Title 23 of the U.S. Code entitled "Highways," and re-enacts it into law. Hereafter references to the highway acts, except as to those portions not repealed, will be to the act of August 27, 1958 (72 Stat. 885), or Title 23, United States Code, 101, etc., as revised August 27, 1958. For example, section 109(d) of the Federal-Aid Highway Act of 1956 has been restated in the act of August 27, 1958, as section 107(d); section 112 of the 1956 act has become section 111 of the 1958 act; and section 108(i) has become section 109(d) of the new act. Section 17 of the Federal Highway Act of 1921 has been restated as section 317, act of August 27, 1958.

*MAA*

The substitution of the term "lands or interests in lands" in section 107(d) and section 317(a) for the term "public lands and reservations" in section 17 of the Federal Highway Act of 1921 and section 109(d) of the Federal-Aid Highway Act in effect extends the applicability of the law to all lands under jurisdiction of the Forest Service. The term "public lands and reservations" had been previously interpreted as inapplicable to Weeks law and other acquired lands. It is now clear that grants of right-of-way for highways on the Interstate System and other Federal-aid systems may be made over lands acquired under the Weeks law and Title III of the Bankhead-Jones Farm Tenant Act, and any other acquired lands under the jurisdiction of the Secretary of Agriculture, as well as over lands reserved from the public domain. The reason is explained in a memorandum of September 10, 1958, from the Acting Assistant General Counsel to the Chief. The memorandum is attached.

Circular U-332 is hereby superseded. Its provisions are amended to conform to the law as stated in the new Title 23, U.S.C. and to subsequent agreements with the Bureau of Public Roads.

This circular prescribes the policy and procedure with respect to rights-of-way for controlled-access Interstate and Defense Highways, National System of Interstate and Defense Highways, and other Federal-aid systems. It also prescribes the policy and procedure for appropriation of rights-of-way for highways on the primary and

(Over)

\* See last page to Sept 10 memo

secondary systems. It does not prescribe the policy or procedure for the transfer of materials sites. Since the Forest Service may authorize the use of mineral materials from the public lands for highway purposes under the act of July 23, 1955, or, by agreement with the Bureau of Land Management, under Sec. 402 of the President's Reorganization Plan No. 3 of 1946, there is no need for the transfer of such sites. Therefore, consent to transfer of materials sites may not be given without the prior approval of the Chief. The policy applies to all lands under jurisdiction of the Forest Service, whether acquired or reserved from the public domain.

It will be the policy of the Forest Service to authorize the States to control access to right-of-way for Interstate System or other Federal-aid projects under conditions which will assure adequate protection and utilization of the national forests, Title III, or other lands under Forest Service jurisdiction.

Rights-of-way over national-forest lands for road projects on the Interstate or other Federal-aid system may be authorized by special use permit under Regulation U-14 or the lands may be appropriated and transferred to the State highway department by the Secretary of Commerce under section 317 of the act of August 27, 1958 (72 Stat. 916) (formerly section 17 of the Federal Highway Act of 1921.) Rights-of-way over Title III lands for such projects may be authorized by permit or easement under section 1011(d) of the Bankhead-Jones Farm Tenant Act or may be appropriated and transferred in the same manner as national-forest lands. Rights-of-way over other lands under Forest Service jurisdiction may be appropriated and transferred only under section 317 unless some special authority exists for their utilization. In view of the provisions of section 107(d) of the act of August 27, 1958 (72 Stat. 893), it is expected that the States will utilize section 317 to a large extent. The Forest Service will consent to but will not encourage appropriation under section 317. Other things being equal, we favor authorization by special use permit.

States wishing to apply for appropriation and transfer of rights-of-way under section 317 should submit their application to the Bureau of Public Roads, Department of Commerce, not the Forest Service. The procedure for handling applications is spelled out in section 317. Authority for handling applications has been delegated to the Bureau of Public Roads. Likewise, authority has been delegated to the Forest Service to deny or consent to the appropriation and transfer of lands under its jurisdiction. The Bureau refers applications to the Forest Service. The law allows a period of four months for action. Within that time the Forest Service may (1) certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which the lands have been reserved or are being managed, or (2) may agree to the appropriation and transfer, subject to conditions for the adequate protection and utilization of the lands. Failure to act within the time allowed will not automatically effect a transfer of the applied-for lands, although the Secretary of Commerce is authorized to take and transfer the land to the State highway department in such case. We should, nevertheless, endeavor to act within the prescribed time.

3652

Authority to act for the Forest Service is hereby delegated to the regional forester. Each region should send its first three controlled-access cases and at least the first case not requiring control of access to this office for prior review. It will then be unnecessary to refer further applications except for advice and counsel as to conditions, failure to reach agreement, or complete impasse. Agreement to appropriation and transfer should be by regional forester's letter to the Bureau of Public Roads. Conditions necessary for the adequate protection and utilization of the land will be stated in each letter of consent. A statement of general conditions of transfer and sample letter are attached. The conditions are typical for controlled-access highways on national-forest lands. They should be varied or adapted as necessary for Title III or other lands under Forest Service jurisdiction.

Control of access is mandatory on the Interstate System and subject to close supervision by the Secretary of Commerce under section 111 of the act of August 27, 1958 (72 Stat. 895). The Interstate standards of the American Association of State Highway Officials are also mandatory under section 109(b) of the act of August 27, 1958 (72 Stat. 894).

Standardization of signing on controlled-access highways is desirable for the safety, convenience, and best utilization by the travelling public. A motorist may easily be confused by a conglomeration of signs. Slow-downs on high-speed roads create safety hazards. A uniform signing system therefore offers the best public service. To that end the Forest Service will comply with the regulations of the Department of Commerce for outdoor advertising on the Interstate System (23 CFR Chapter 1, Part 20). We will work with State highway departments to obtain a marker for national forest exits, such as shown in the "example" under "Other Guide Signs" in the attached Excerpts from the AASHO Manual for Signing, and such other markers as may be necessary for the information and convenience of the traveling public as set out in the excerpts. The Forest Service will not insist on standard national forest entrance or information signs on controlled-access highways.

Copies of the aforementioned sections of the act of August 27, 1958, 23 CFR Chapter 1, Part 20, and applicable sections of the AASHO standards are attached.

Conditions necessary to provide access to the national forests are covered by general requirements under items 1.(e) and (f) of the General Conditions of Transfer to be Covered in Each Letter of Agreement. They should be adapted for other lands and modified where control of access is not required. When an Interstate System project advances to the design stage, the actual location of all connections to existing and planned forest development, project, or other roads under Forest Service control, fire control gates and driveways, cattle passes for range use, migratory game openings, erosion control measures, and other provisions necessary for the protection and utilization of the forests or other Forest Service-administered lands should be agreed on with the State and made a matter of record with the Bureau of Public Roads in the letter of agreement or consent. (See "General Conditions to be Covered in Each Letter of Agreement.") Because of the limitations of section 111, all present and, so far as they can be foreseen, future requirements for access shall be provided for at the outset.



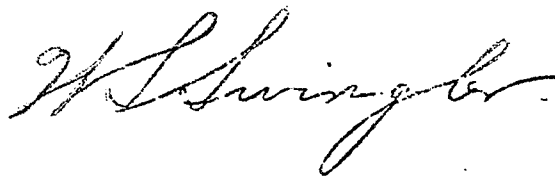
3652

Requirements necessary for fire protection or the protection of national forest, Title III, or other land values from damages other than fire during the construction period should be spelled out by additional clauses as needed.

Needed width of right-of-way will vary according to topography and design details. As a guideline, sections across national-forest, Title III, or other lands under Forest Service jurisdiction should be comparable to those across adjacent private lands.

Please send us an information copy of each letter of agreement to the Bureau of Public Roads; also of each special use permit, easement, or other authorization issued for rights-of-way for Interstate System or other Federal-aid system project.

This new policy and procedure will be incorporated in Title 2700 of the Manual and Handbook soon after these chapters are published.

A handwritten signature in cursive script, appearing to read "W. L. Swingle".

Attachments

DISTRIBUTION: Supervisors

3652

## GENERAL CONDITIONS OF TRANSFER TO BE COVERED IN EACH LETTER OF AGREEMENT

General Instructions:

In order that the transfer instrument, which will be prepared by the Bureau of Public Roads, may clearly define the respective rights and obligations of the Forest Service and the State highway department, specific agreements should be reached between the Regional Forester and the State highway department as to conditions 1.(3) (1) and (2), 1.(f), and 1.(i) and the specific requirements included in each letter of agreement in lieu of the general requirements outlined in the conditions below. See sample letter.

1.(g) and (h) Written agreement should be reached with both the State highway department and the State conservation or game department on specific provisions necessary to safeguard big game crossings and on other improvements or adjustments needed to protect fish and wildlife habitat, and to provide public access to hunting and fishing areas.

1.(i) Specify all buildings or other improvements to be replaced, the new location, and standard of structure. (Standard usually will be that equal to that of the structure destroyed. It should never be less.)

1.(k) The Bureau of Public Roads has objected to this requirement. However, the timber is the property of the United States and we should retain control. The Forest Service is well equipped from engineering, safety, silviculture, aesthetic, recreation, and general public interest considerations to make such determinations. This condition may be omitted in areas of low timber values or of little recreational, scenic, or aesthetic importance.

Other conditions of transfer shall be included in each letter as set forth herein, except where clearly inapplicable.

General Conditions:

1. The State Highway shall with respect to the appropriated land:
  - (a) Comply with regulations of the Secretary of the United States Department of Agriculture pertaining to the occupancy and use of national-forest or other land under his jurisdiction for highway purposes.
  - (b) Take all reasonable precaution to avoid damage to property and resources of the United States and diligently undertake prevention of fires and suppression action in the event of fire resulting from highway construction or maintenance.
  - (c) Provide a fire patrolman with proper equipment on all construction projects during periods stipulated by the Supervisor of the \_\_\_\_\_ National Forest.



3652

(d) Comply with the forest fire rules and regulations of the State of \_\_\_\_\_ and the U. S. Forest Service.

(e) Build suitable access structures, grade separations, and/or connecting roads on locations and to standards approved by the Supervisor of the \_\_\_\_\_ National Forest which are necessary to give access to or across the highway from

- (1) any existing or planned national-forest development road intersected or blocked by the right-of-way and
- (2) any existing improvement or development of the United States or its permittees, such as camp and picnic grounds, summer homes, hotels and resorts, and government stations.

Specify all points of access, grade separations, connecting roads, and locations in each letter.

(f) Install locked gates or removable panels in the rights-of-way fences with suitable driveways thereto at locations requested by the Supervisor of the \_\_\_\_\_ National Forest to give access for fire fighting. Specify the number and location of gates or panels and necessary driveways and tie in with road specifications and stations.

(g) Employ all reasonable measures to avoid interference with the seasonal migrations of big game animals by:

Consulting with the State Game and Fish Department and the Forest Service prior to construction and complying with reasonable requirements such as (1) leaving sections of highway unfenced in big game migration areas where there is no critical need for fencing to control public access to the highway, (2) installing overpasses or other structural devices to avoid highway interference with big game movements, (3) posting precautionary signs on approaches to all big game crossings, (4) aligning road to minimize impact on critical big game winter ranges.

(h) Take all reasonable precaution to avoid damage to fish habitat by:

Consulting with the State Game and Fish Department and the Forest Service prior to construction and complying with reasonable recommendations for (1) road alignment which will minimize interference with normal streams or changes in stream channels, (2) drainage facilities which will avoid depositing silt in streams, (3) structural fish habitat improvements to alleviate unavoidable damage.

3652

- (i) Replace any building or other improvement of the United States which will have to be removed from the right-of-way or will be destroyed during construction at a location approved by the Supervisor of the \_\_\_\_\_ National Forest.

List each building or other improvement to be replaced.

- (j) Protect and preserve soil and vegetative cover and scenic and aesthetic values on the right-of-way and on adjacent lands of the United States so far as practicable and consistent with the construction, operation, and maintenance of the highway.
- (k) Remove no live trees from the roadsides in the right-of-way without the prior consent of the Supervisor of the \_\_\_\_\_ National Forest.
- (l) Cut any merchantable timber removed from the right-of-way into standard log lengths and deck the logs at spots convenient for loading for disposal by the Forest Service.
- (m) Require its employees and its contractors and their employees to comply with these conditions.

2. The appropriation and transfer shall be only for the purpose of constructing, maintaining, operating, improving, and reconstructing a highway, including the control of access to, from, and between the right-of-way and the abutting land of the United States, pursuant to the provisions of section 107(d) of the act of August 27, 1958 (72 Stat. 893; 23 U.S.C. 107(d)).

3. All other rights remain with the Forest Service, including the authority to use and control the use and occupancy of the roadsides for other purposes and to erect and maintain national forest and other Department of Agriculture information signs and do timber stand improvement and sanitation cutting in the roadsides. The Forest Service will not insist on standard national forest entrance or information signs on controlled-access highways.

4. This appropriation is subject to all valid claims.



3652

SAMPLE LETTER (Composite)

Before preparing actual letter, refer to "General Conditions of Transfer to be covered in Each Letter"

U  
 USES, R-2, Routt  
 State Highway Dept. of Colo.  
 State Highway No. 2, U.S. 40  
 Federal Aid Project No. F-005-2 (14)

Mr. Charles D. Beach, Division Engineer  
 Bureau of Public Roads  
 Denver 2, Colorado

Dear Mr. Beach:

Application has been made for the appropriation and transfer of lands of the United States within the Routt National Forest for right-of-way for the reconstruction of U.S. Highway 40, which is also State Route 2. The areas applied for are in the N 1/2 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4, Sec. 26; NW 1/4 SW 1/4, S 1/2 SW 1/4, NE 1/4 SE 1/4, SE 1/4 NE 1/4, Sec. 25; N 1/2 NW 1/4, NW 1/4 NE 1/4, S 1/2 NE 1/4, Sec. 36; T. 5 N., R. 84 W.; Lot 1, Lot 2; E 1/2, Sec. 31; Lot 2 Lot 3, Lot 4, NE 1/4, Sec. 30; NE 1/4 NW 1/4, Sec. 29; SW 1/4 SW 1/4, Sec. 20; T. 5 N., R. 83 W., 6th P.M., as shown on sheet 1 of the plat entitled Forest Land Map, Routt County, Project No. F-005-2 (14), signed Mark U. Watrous on April 25, 1958.

We agree to the appropriation and transfer of these lands under the provisions of sections 107(d) and 317 of the act of August 27, 1958 (72 Stat. 893, 916; 23 U.S.C. 107(d) and 317), under the following conditions:

1. The Colorado Department of Highways shall with respect to the appropriated lands:
  - (a) Comply with regulations of the Secretary of Agriculture governing the occupancy and use of national-forest land for highway purposes, except as to conflicts herewith.
  - (b) Take all reasonable precaution to avoid damage to property and resources of the United States and diligently undertake prevention of fires and suppression action in the event of fire resulting from highway construction or maintenance.
  - (c) Provide a fire patrolman with proper equipment on all construction projects during periods stipulated by the Supervisor of the Routt National Forest.

3652

- (d) Comply with the forest fire rules and regulations of the State of Colorado and the U.S. Forest Service.
- (e) Build suitable access structures, grade separations and/or connecting roads to standards approved by the Forest Supervisor of the Routt National Forest at the following locations, as shown on Plan and Profile of Proposed Federal Aid Project No. F-005-2 (14):

<u>Access Structures:</u>	<u>Station and Direction</u>
218 + 00	Left
314 + 00	Right
353 + 50	Left
410 + 50	Left and Right

Connection Road

From BLANK Ranger Station and FRD \_\_\_\_\_ to Highway 40 at Station 353.50.

Grade Separation

Station 314 + 00

- (f) Install locked gates or removable panels in the right-of-way fences and driveways thereto to give access for fire fighting at the following locations:

1.6 mi. west of station 353.50 to connect with Forest Road No. 680

1 mi. east of station 218 to connect with Deep Canyon Road and Forest Road No. 169.

All driveways will be constructed to standards satisfactory to the Supervisor of the Routt National Forest.

- (g) In accordance with the joint recommendation of the State Fish and Game Department and the Forest Service:
- (1) Leave both sides of the R/W unfenced between Stations 415 + 98 and 430 + 58 to permit free passage of migratory deer herd.
  - (2) Change highway alignment between Stations 315 + 32 and 341 + 81 as agreed upon and shown on attached plans to avoid bisecting an important deer winter range unit.



3652

- (3) Construct overpass across Black Canyon to attached specifications to permit large deer herd to cross under the highway without interfering with the heavy traffic flow in this area.
- (4) Provide parking ramps and gates to permit hunter and fisherman access as follows:
  - 185 + 17 northside
  - 417 + 03 both sides.
- (h) Take the following precautions recommended by the Forest Service and the State Game and Fish Department to avoid damage to fishing waters:
  - (1) Install all culverts in fishing streams at the grade of the stream. Avoid drop-offs at outlet. Where necessary to accomplish this, lay culvert below stream bed level.
  - (2) Change highway alignment between 191 + 17 and 215 + 25 as shown on plan to avoid bisecting Turpin Meadows.
  - (3) Use open-box, concrete culvert or bridges on the following stream crossings to permit free migration of salmon and steelhead:
 

Cotton Wood Creek	301 + 72
Buffalo Fork	395 + 15
Jones Creek	457 + 18.
  - (4) Place large boulders in stream channel between Stations 417 + 20 and 430 + 10 as shown on attached plan and specifications to improve fish habitat damaged by the unavoidable crowding of stream channel in this area.
- (i) Replace the following buildings or improvements of the United States which will be destroyed or removed during construction, at locations, to standards, and in accordance with plans approved by the Supervisor of the Routt National Forest:
  - (1) Bear Ears Ranger Station
  - (2) Signal Fire Tower.
- (j) Protect and preserve soil and vegetative cover and scenic and aesthetic values on the right-of-way and on adjacent lands of the United States so far as practicable and consistent with the construction, operation, and maintenance of the highway.
- (k) To remove no live trees from the roadsides in the right-of-way without the prior consent of the Supervisor of the Routt National Forest.

3652

- (l) Cut any merchantable timber removed from the right-of-way into standard log lengths and deck the logs at sites convenient for loading for disposal by the Forest Service, unless other means of disposing of such timber is agreed to in advance by the Supervisor of the Routt National Forest.
  - (m) Require its employees and its contractors and their employees to comply with these conditions.
2. The appropriation and transfer shall be only for the purpose of constructing, maintaining, operating, improving, and reconstructing a highway, including the control of access to, from, and between the right-of-way and the abutting land of the United States, pursuant to the provisions of section 107(d) of the act of August 27, 1958 (72 Stat. 893; 23 U.S.C. 107(d)).
  3. All other rights remain with the Forest Service, including the authority to use and control the use and occupancy of the roadsides for other purposes and do timber stand improvement and sanitation cutting in the roadsides.
  4. This appropriation is subject to all valid claims.
  5. The discharge ends of all channel changes shall be so laid out and aligned as to provide direct flow into old stream bed without an abrupt direction change.
  6. Loose rock and/or rubble shall be dumped or placed in areas where scour or erosion may be set-up due to construction of new channels or where concentrated water discharge may cause erosion.
  7. Where channel changes are made in soil types subject to erosion, adequate protection shall be provided by ditch checks, rip-rap or other method approved by the Forest Service.
  8. Trees and/or shrubs shall be planted in those areas where it is deemed necessary to help control soil erosion.
  9. All earth cut or fill slopes favorable to revegetation flatter than 1 to 1, or other areas on which ground cover is destroyed in the course of construction, will be revegetated with grass or other suitable vegetation as required by the Forest Supervisor. The Supervisor may also require that a ground cover be established on cut or fill slopes steeper than 1 to 1 in unusual situations if favorable to revegetation.

3652

The Supervisor of the Routt National Forest will be glad to cooperate with members of the State highway department in carrying out the requirements and conditions stipulated.

Very truly yours,

Donald E. Clark  
Regional Forester

By \_\_\_\_\_  
E. M. Karger

Act of August 7, 1958 <sup>1/</sup>  
 (72 Stat. 885, et seq.)

Section 317 [formerly section 17, Federal Highway Act of 1921.]

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 highway 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 highway 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.

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

\* \* \*

(d) [formerly 109(d), Federal-Aid Highway Act of 1956]

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



3652

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.

Section 111 [formerly section 112, Federal-Aid Highway Act of 1956] Agreements relating to use of and access to rights-of-way — Interstate System.

All agreements between the Secretary and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use the airspace above and below the established grade line of the highway pavement for the parking of motor vehicles provided such use does not interfere in any way with the free flow of traffic on the Interstate System.

Section 109. Standards.

\* \* \*

(b) [formerly section 108(i), Federal-Aid Highway Act of 1956]

The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State highway departments. Such standards shall be adequate to accommodate the types and volumes of traffic forecast for the year 1975. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System up to such standards. The Secretary shall apply such standards uniformly throughout the States.

\* \* \*

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State highway department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

1/ N.B. "Title" means Title 23, U.S. Code, as revised 8/27/58.

"Chapter 1" means the chapter of Title 23 entitled, "Federal Aid Highways."

"Chapter 2" means the chapter of Title 23 entitled, "Other Highways."

"Chapter 3" means the chapter of Title 23 entitled, "General Provisions."

"Secretary" means Secretary of Commerce.

EXCERPTS FROM AMERICAN ASSOCIATION OF STATE HIGHWAY  
OFFICIAL STANDARDS FOR THE INTERSTATE SYSTEM  
(Approved July 17, 1956 by Bureau of  
Public Roads)

GENERAL - The National System of Interstate and Defense Highways is the most important in the United States. It carries more traffic per mile than any other comparable national system and includes the roads of greatest significance to the economic welfare and defense of the Nation. The highways of this system must be designed in keeping with their importance as the backbone of the Nation's highway systems. To this end they must be designed with control of access to insure their safety, permanence, and utility and with flexibility to provide for possible future expansion. Two-lane highways should be designed so that passing of slower moving vehicles can be accomplished with ease and safety at practically all times. Divided highways should be designed as two separate one-way roads to take advantage of terrain and other conditions for safe and relaxed driving, economy, and pleasing appearance. All known features of safety and utility should be incorporated in each design to result in a National System of Interstate and Defense Highways which will be a credit to the Nation.

These objectives can be realized by conscious attention in design to their attainment. All Interstate highways shall meet the following minimum standards. Higher values which represent desirable minimum values, a device used in previous Interstate standards, are not shown because it is expected that designs will generally be made to values as high as are commensurate with conditions, and values near the minimums herein will be used in design only where the use of higher values will result in excessive cost. In determination of all geometric features, including right-of-way, a generous factor of safety should be employed and unquestioned adequacy should be the criterion. All design features required to accommodate the traffic of the year 1975 shall be provided in the initial design; however, where justifiable, the construction may be accomplished in stages.

The American Association of State Highway Officials' "Policy on Geometric Design of Rural Highways," the "Policy on Arterial Highways in Urban Areas," when adopted, and the "Standard Specifications for Highway Bridges" shall be used as design guides where they do not conflict with these Standards.

CONTROL OF ACCESS - On all sections of the Interstate System, access shall be controlled by acquiring access rights outright prior to construction or by the construction of frontage roads, or both. Control of access is required for all sections of the Interstate System. Under all of the following conditions, intersections at grade may be permitted in sparsely settled rural areas which are a sufficient distance from municipalities or other traffic-generating areas to be outside their influence, and where no appreciable hazard is created thereby.

3652

- (a) The Interstate highway is a two-lane highway having a DHV (1975) of less than 500.
- (b) Each intersection at grade is with a public road or private driveway with little potential for traffic increase and on which the current average daily traffic does not exceed 50 vehicles.
- (c) Such intersections do not exceed two per side of the Interstate highway per mile.
- (d) Sufficient additional corner right-of-way at each intersection at grade is acquired to insure that access connections on the crossroad are sufficiently removed to minimize interference with the Interstate highway.
- (e) The right to eliminate, terminate, or reroute each such public road or private driveway is vested in the appropriate public authority at the time of initial construction.

Where a grade separation is called for under these standards and extraordinary conditions exist under which a grade separation would not be in the public interest, an intersection at grade may be permitted through agreement between the State highway department and the Secretary of Commerce.

SLOPES - Side slopes should be 4:1 or flatter where feasible and not steeper than 2:1 except in rock excavation or other special conditions.

RIGHT OF WAY - Fixed minimum widths of right-of-way are not given because wide widths are desirable, conditions may make narrow widths necessary, and right-of-way need not be of constant width. The following minimum widths are given as guides.

In rural areas right-of-way widths should be not less than the following, plus additional widths needed for heavy cuts and fills:

	<u>Minimum Width in Feet</u>	
	<u>Without Frontage Roads</u>	<u>With Frontage Roads</u>
2 - lane.....	150	250
4 - lane divided....	150	250
6 - lane divided....	175	275
8 - lane divided....	200	300

In urban areas right-of-way width shall be not less than that required for the necessary cross section elements, including median, pavements, shoulders, outer separations, ramps, frontage roads, slopes, walls, border areas, and other requisite appurtenances.

3652

EXCERPTS FROM THE AMERICAN ASSOCIATION OF STATE HIGHWAY OFFICIALS MANUAL  
for Signing and Pavement Marking of the NATIONAL SYSTEM of INTERSTATE and  
DEFENSE HIGHWAYS (1958)

INTRODUCTION

The National System of Interstate and Defense Highways, referred to as the Interstate System and now under construction along the Nation's principal travel desire lines, was conceived and is being built primarily to provide rapid, convenient and safe travel between and through major traffic generating centers. Essential to the realization of these valuable benefits is a uniform system of highway signing that will be fully adequate in an environment of high density, high speed motor vehicle traffic on modern controlled access highways. It has been demonstrated that signing, as developed over the years for conventional, non-access-controlled roads and streets, is not satisfactory. For this reason, a new concept in signing for the Interstate System is required.

The design for signs of the Interstate System must be approached with the premise that the signing is primarily for the benefit and direction of drivers who are not familiar with the route or the area. Signs must contain messages that are carefully selected and designed for easy reading and must be prominently and effectively displayed so as to induce drivers to react promptly, naturally and properly to the traffic and design conditions encountered.

Signing the Interstate routes is the responsibility of the several State Highway Departments since all of the routes comprising the Interstate System are, or will be, official State highway sections. However, variations in signing practice from State to State would result in a confused traveling public. Therefore, it is essential that a system of uniform signing, based on the best current practice, be adopted and universally used on the Interstate System in all of the States and the District of Columbia. Section 12 of the Federal-Aid Highway Act of 1944 requires the concurrence of the Bureau of Public Roads in the signing of federal aid projects as a means of achieving the desired uniformity. The purpose of this manual is to implement this provision by setting forth the basis for the desirable and required uniformity of practice.

From time to time, as changes in the uniform signing procedure may seem desirable, the Member Department, proposing such a change, shall refer the suggestion to the Association's Operating Committee on Traffic for consideration. The Committee on Traffic may authorize a limited amount of research and experimentation on proposed changes in the official signing procedure, and bring the recommendations of the Traffic Committee to the attention of the Executive Committee. The Executive Committee then may authorize that the proposal be submitted to the Member Departments for letter ballot. If approved by two-thirds of the Member Departments and concurred in by the Bureau of Public Roads, then the proposed addition or alteration to the established uniform signing practice for the Interstate System shall be put



3652

into effect in all of the States. If the change revises an existing practice, the individual Member Departments may delay the actual application of the new practice until they find it necessary to renew affected signing in place.

Existing free roads and toll roads incorporated in the Interstate System are not required to comply with these uniform sign specifications until major replacements are necessary in the course of major sign replacement. Sections of such highways that are reconstructed with federal aid and any sections of the Interstate System that are constructed as federal aid projects shall be signed in accordance with these uniform signing standards and federal funds may be claimed for the purpose as a construction reimbursement in accordance with controlling rules and regulations.

The Interstate highway signs will be erected at the roadside and, where warranted, over the roadway, to furnish drivers with the series of clear instructions necessary for orderly progress to their destinations. Highway routes, place names, mileage indications, service facilities, and operating rules are among the items of information that must, in accordance with local needs, be unmistakably identified. It is also desirable that signs giving information regarding police headquarters, airports, recreational areas, historical sites, "anti-littering" warnings, State lines, time zones, stream names and State welcome messages be used.

Sign installations are in fact an integral element of the Interstate highway facility, and, as such, must be planned concurrently with the development of location and geometric design. Plans for signing should be analyzed during the earliest stages of preliminary design. Neglect of the correlation of signing and design can result in physical layouts that are plagued with chronic operating difficulties.

The cost of an up-to-date, effective signing system is but a minute fraction of the total facility cost, and realistic provisions for sign installations commensurate with the superior traffic services of the Interstate Highway System ought always to be the primary objective. The difference in cost between mediocre and excellent signs is negligible. The following specifications are intended to provide adequate sign treatment for the Interstate Highway System.

Other needed signs, not referred to in detail in this manual, shall follow the general principles for Interstate signing set forth in this manual and conform to appropriate color, reflectorization, letter size and type. No other signs except those in general conformance with those described are to be erected within the Interstate System rights of way. References herein to the Standard Manual on Uniform Traffic Control Devices refer to the August 1948 manual as prepared by the Joint Committee of the American Association of State Highway Officials, the Institute of Traffic Engineers and the National Committee on Uniform Laws and Ordinances and to the Revisions (Supplement) thereto of 1954.

3652

SIGNING FOR INTERCHANGES

\* \* \*

Other Guide Signs

\* \* \*

Some parts of the Interstate Highway System will pass through "historical" or "recreational" regions, or other areas of special interest served generally by a succession of several interchanges. Such areas may be indicated by a special sign several miles, if possible, in advance of the Advance Exit Guide sign or signs for the first interchange carrying a suitable legend to identify the region, followed by the words "Next (3) Exits," or "Next (3) Interchanges" where appropriate. The legend shall be in lower-case letters of 10" loop height with 13.3" initial capitals, except the bottom line, which shall be in 12" capitals.

Example

Hiawatha  
National Forest  
NEXT 3 EXITS/

SIGNING FOR SERVICES

On the controlled-access Interstate Highway System, it is assumed that generally there will be no commercial services available to the traveler between interchanges. It is expected that fuel, motor services, and lodging will rapidly become available at most interchange sites. It is also assumed that service signing will not be required in urban areas. However, on those rural sections where such services are infrequent, the driver will need information to enable him to plan his stops.

For the present the criteria for determining what establishments shall warrant a Service's sign will have to be developed by each State for its own conditions. The Service's sign shall be mounted in an effective location in advance of the exit leading to the services available and should contain such legend as may be appropriate. If the distance to the next point where services are available is considerable, a sign "Next Services ( ) Miles" may be used as a separate panel mounted under the Exit Direction Sign at the beginning of the deceleration lane at the interchange. The legend of this sign shall be in 10-inch capital letters. Very definitely more experience and study of motorist reactions and desires, as well as an indication of where and what private enterprise develops to serve the traffic, are needed in determining the proper signing for essential services.

3652

A sign carrying only the legend "Gas--Food--Lodging" may not entirely satisfy the motorist in that it gives no indication of the location, quantity, quality, or brand of services available. It is not necessary to determine a universal signing practice for Services at this time, but it will develop with experience as more of the Interstate System is placed into service. Federal law prohibits any signing that may be interpreted as commercial from occupying the Interstate right of way.

(Committees of the American Association of State Highway Officials are currently working on a uniform method of marking routes through and into cities that are by-passed by the Interstate route).

All signing for services shall have nonreflectorized green letters, symbols, and border on a reflectorized white background.

#### GENERAL

No Stop Sign or Stop Signals of any type shall be erected or operated on the through roadways of the Interstate System.

Church, School, Civic Club, semi-official and similar signs shall not be placed on the Interstate right of way. Only official signs, under the direction and control of the State highway department and necessary for the orderly operation of the highway facility shall be placed.

Where the Interstate highway is developed on existing location, the route will be marked with the Interstate Route Marker together with such other route markers as apply to the existing highway.

Interstate highways shall not be signed as Memorial Highways.

3652

U  
USES, R-5, Tahoe  
California Division of Highways  
U.S. 40, Section F, B

December 3, 1958

Mr. C. D. Curtiss  
Commissioner of Public Roads

Dear Mr. Curtiss:

Further reference is made to your letter of April 25, 1958.

All of the points raised in your letter have been considered here and in our California Region. We concur in some but are unable to agree on others. It was our thought initially to reach agreement on appropriation and transfer of a particular right-of-way or section subject to certain general but fundamental principles. Thereafter the exact requirements, such as points of access and replacement of structures, could be agreed upon in conference between the State highway officials and Forest Service officials. We will be glad to go along with you in fixing the requirements for (1) (e) (1) and (2) and, also, for (1) (f) and (1) (h) as covered in our letter of October 1, 1957. Enumeration of points of access, grade separations, and connecting roads; location of locked gates and appurtenant driveways; and relocation or replacement of buildings will necessitate more complete data on plans and specifications from the State highway agency. Preliminary maps are not satisfactory for this purpose. By working together during the highway survey and design period, the State highway engineers and the Forest Supervisor can usually agree on all requirements.

The design of the highway can include the required access points, grade separations, and connecting roads. The transfer document can include the proper references and specify all replacements made necessary by the highway project. We would like to stress here that specification of exact requirements in letters of agreement is possible only with the closest cooperation and predetermination of needs by the State highway department and the Forest Service.

Adequate pre-consultation between the State Fish and Game Department, the State Highway Department, and the Forest Service will enable the agencies to reach agreement on the specific requirements for protection and management of fish and wildlife resources. Thus the facilities needed for these purposes can be set out in the letter of agreement.

Your position relating to the removal of timber from the right-of-way is understandable so far as it concerns the ordinary land owner. However, the Forest Service is a land managing agency of the United States well equipped from engineering, safety, silvicultural, aesthetic, recreation, and general public interest considerations to make such determinations. We agree that safety of highway users is a primary factor, and quite probably the primary factor, in the operation and maintenance of a highway; however, we believe all of the other factors must also be evaluated in



3652

reaching decisions to remove timber from roadsides. Furthermore, in heavily timbered areas in the western national forests a single tree may be quite valuable. Several such trees could represent a large cash value. The sale of timber in such areas is carefully planned to give all interested operators like privileges. To allow the State highway department to remove these trees at will would pose public relations and fiscal problems and might subject both the Forest Service and the State highway departments to unwarranted, unnecessary, and undesirable criticism. Aside from these considerations, the Forest Service has a public responsibility to preserve scenic roadsides. Trained foresters, landscape architects, and recreation experts are available for that purpose. Our engineers are safety conscious. The Forest Service will be glad to lend the State highway departments every cooperation to the end that unsafe trees are removed from rights-of-way, but it must reserve to itself under its multiple-use management program final authority under (1) (j).

Hereafter we will consent to appropriation and transfer of lands "under the provisions of sections 317 and 107(d) of the act of August 27, 1958 (72 Stat. 916 and 893; 23 U.S.C. 317 and 107(d)), for rights-of-way, including control of access" subject to certain specified conditions. Condition (2) of our letter of October 1, 1957, will be modified to include your suggestion so that this condition will read: "The appropriation and transfer shall be only for the purpose of constructing, maintaining, operating, improving, and reconstructing a highway, including the control of access to, from, and between the right-of-way and the abutting land of the United States, pursuant to the provisions of section 107(d) of the act of August 27, 1958 (72 Stat. 893; 23 USC 107(d))."

Condition (3) will be modified to make it clear that all other rights and responsibilities in and to the land remain in the Forest Service. Revised condition (3) will then read, "All other rights remain with the Forest Service, including the authority to use and to control the use and occupancy of the roadsides for other purposes and to erect and maintain national forest information and other Department of Agriculture information signs and do timber stand improvement and sanitation cutting in the roadsides." The right to erect signs will not be exercised on controlled-access highways. As indicated above, the Forest Service is a responsible land management agency; retention of control of use other than for the purposes specified in the revised highway laws is fundamental.

We are enclosing a copy of our revised policy statement, general conditions basic to each appropriation, and instructions for making certain conditions specific in each case. We feel that proper cooperation between the State highway departments and forest supervisors and regional foresters will solve problems of timber or tree removal, sanitation and silvicultural cutting, right-of-way burning, and like problems which will arise with the maintenance and operation of these limited access and other Federal-aid highways.

3652

The Regional Forester for the California Region will advise you specifically of the conditions required to be enumerated as outlined herein, such as points of access, replacement of structures, and like matters for both the Tahoe and Shasta-Trinity projects.

Very truly yours,

Richard E. McArdle, Chief

By: /S/ W. S. Swingler

Enclosures

3652

DEPARTMENT OF COMMERCE  
BUREAU OF PUBLIC ROADS  
Washington 25, D. C.

In Your Reply Please  
Refer To File No. 26-21

April 25, 1958

Mr. John Sieker  
Director, Division of Recreation  
and Land Uses  
U.S. Department of Agriculture  
Washington 25, D. C.

Dear Mr. Sieker:

Reference is made to your letter of April 7 concerning the transfer of a right-of-way over certain land in the Tahoe National Forest in connection with California Interstate Project I-092-4(2).

We have reviewed the terms and conditions contained in your letter of agreement to the proposed transfer and would appreciate your giving consideration to our observations and suggestions as are set forth below:

In the first four lines of paragraph 2, you advise of your agreement to the transfer of the right-of-way pursuant to the provisions of the 1921 and 1956 Acts under stated conditions. We feel it would be desirable if your letter were to state, at this point, that the transfer made under the provisions of these Acts is for a right-of-way for highway purposes including all abutter's easements or rights of access to, from, and between the right-of-way and the abutting land of the United States subject, however, to stated terms and conditions.

While we agree with the general purposes of conditions (l)(e), (f), and (h), it is believed that specific agreements should be reached with the Regional Foresters on these matters and that such should be substituted for the general language of the present conditions in order that the transfer instrument which we will prepare may define clearly the respective rights and obligations of the parties.

As to condition (l)(g), it is recognized that provision may have to be made for deer crossings in certain areas. However, it is believed that the nature of such crossings should be worked out at field level as in the case of other crossings and that the matter of fencing should be left to the States which must see to the safety of the traveling public.

Likewise we are concerned about condition (l)(j). It would seem to be essential to the proper operation and maintenance of a highway for the State Highway Department to be able to control its right-of-way, particularly to the extent of having the authority to remove obstructions to view which might endanger the safety of highway users.

3652

If our suggestion regarding revision of paragraph two is satisfactory, condition (2) would seem to be superfluous. However, if this condition is to be retained, it is suggested that there be substituted for the last eight words, the words "operating, improving, and reconstructing a highway including the control of access to, from, and between the right-of-way and the abutting land of the United States, pursuant to the provisions of Section 109(d) of the Federal-Aid Highway Act of 1956."

Since the Highway Act of 1956 provides for the transfer of adequate rights-of-way, based on standards approved by the Secretary of Commerce, and for the control of access between the right-of-way and adjoining land, condition (3) is questioned particularly to the extent that it reserves to the Service a general right of control over the roadsides within a right-of-way as distinguished from rights of use for specified needs of the Service.

These observations apply also to your letter of agreement on the rights-of-way for Interstate Projects IN-141(6) and (7) involving land in the Shasta-Trinity National Forest.

Inasmuch as Forest Service and Public Roads have delegated authority to handle right-of-way transfers to regional offices, I am certain you will agree that it is particularly desirable that a joint understanding be reached as to these first cases which were processed prior to the delegations. In this regard, it may be helpful to discuss these questions further as well as other matters of mutual concern. If you agree, I suggest that you contact Mr. Krevor of my staff on Code 183, Extension 2897.

Sincerely,

/S/ C. W. Enfield

C. W. Enfield  
General Counsel

Distribution: Supervisors

3652

UNITED STATES DEPARTMENT OF AGRICULTURE  
Office of the General Counsel  
Washington 25, D. C.

September 10, 1958

To: R. E. McArdle, Chief, Forest Service

From: Acting Assistant General Counsel

Subject: Effect of Recodification of 23 U.S.C. (Public Law 85-767, approved August 27, 1958) on Acquired Lands

In our memorandum of February 28, 1958, we expressed the view that the term "public lands and reservations" in Section 17 of the Federal Highway Act of 1921, 23 U.S.C. 18, and Section 109(d) of the Federal Aid Highway Act of 1956, 23 U.S.C. 159(d), relates only to the public domain or land reserved from the public domain and not to lands acquired under Title III of the Bankhead-Jones Farm Tenant Act and Weeks Law lands.

Section 107(d) of the Act of August 27, 1958 (Public Law 85-767), contains a restatement of Section 109(d) of the 1956 Act. In the new section the term "lands or interests in lands" was substituted for "public lands or reservations." The same change was made in Section 317(a) of the Act of August 27, 1958, which restated the first paragraph of Section 17 of the 1921 Act. In Senate Report No. 1928 to accompany S. 3953 (pp. 36, 109), it was stated that the substitution of the term "lands or interests in lands" in Sections 107(d) and 317(a) for the term "public lands and reservations" in Section 17 of the Federal Highway Act of 1921 and Section 109(d) of the Federal Aid Highway Act of 1956 was made "for purposes of clarity."

The legislative history of the Act does not disclose the manner in which the substitution of the term "lands or interests in lands" for "public lands or reservations" was made. However, it seems that it was clearly the intent of Congress to remove all restrictions from the categories of lands that might be used under Sections 107(d) and 317(a).

It is, therefore, the opinion of this office that both of the above-mentioned sections of Public Law 85-767 are applicable to lands acquired under Title III of the Bankhead-Jones Farm Tenant Act and Weeks Law lands and to any other acquired lands which are under the jurisdiction of other bureaus of the Department as well as to public domain lands.

The opinion expressed in our memorandum of February 28, 1958, is superseded insofar as it concerns the Federal Highway Act of 1921 and Federal Aid Highway Act of 1956.

/S/ Herman D. Plavnick