

Form 1221-2
(June 1969)



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Release
5-141

MANUAL TRANSMITTAL SHEET

Date
6/18/92

Subject

H-5400-1 SALE OF FOREST PRODUCTS

1. Explanation of Material Transmitted: This release transmits BLM Manual H-5400-1 - Sale of Forest Products, a new handbook to provide guidance on policy and procedures concerning the sale of forest products.
2. Reports Required: None
3. Material Superseded: None
4. Filing Instructions: File immediately after the Manual Section.

REMOVE

INSERT

None

H-5400-1
(Total: 23 Sheets)

Mike Penfold
Assistant Director
Land and Renewable Resources

H-5400-1 - SALES OF FOREST PRODUCTS

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1. Memorandum of Understanding, WO-11, Forest Products Sales, with Small Business Administration.
2. Memorandum of Understanding, WO-14, Timber Sales and Loans, with Small Business Administration
3. Memorandum of Understanding, WO-35, Integrated Timber Sales, with U.S. Forest Service
4. Memorandum of Understanding, WO-140, Right-of-Way and Road Use, with U.S. Forest Service

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I. General Sale Requirements/Considerations.

- A. Acceptable Forms of Measurement. All forest products to be sold shall be measured by cruise, log scale, weight or such other form of measurement determined to be in the public interest. As a general practice, the Bureau will sell timber on a timber cruise basis. Timber may be sold on a log scale basis provided that log scaling is in accordance with 43 CFR 5422.2. (See BLM Manual 5300 – 5320, inclusive, for detailed discussion of timber measurements.)
- B. Appraisal. Forest products appraisals shall reflect current market conditions as closely as possible to assure that the Bureau receives a fair market value for forest products sold. (See BLM Manual 9350 – 9355, inclusive, for detailed discussion of forest products appraisals.)
- C. Contract Forms. All forest product sales shall be documented on contract forms approved by the Director. The need for special provisions for each forest product sale shall be carefully evaluated and only those special provisions which are clearly necessary should be included. All provisions of the contract shall be strictly enforced. All provisions must first be approved by the Solicitor Office.
- D. Reforestation of Sale Areas. Each forest product sale shall be planned to facilitate the prompt reestablishment of the forest stand after harvest. This may be by artificial or natural means and must be detailed in the stand prescription.
- E. Full Utilization. Each forest product sale shall be designed to provide opportunity for maximum recovery of all material sold. Where it is determined to be necessary to meet the goals of the management plan, the purchaser may be required to remove or leave material of specific sizes.
- F. Protection of Forest Values. Harvesting practices shall be prescribed which will minimize damage to reserve trees and provide maximum protection from fire, insects, disease, wind and other hazards.
- G. Protection of Watershed. Each sale shall be planned using best management practices (BMP's) to reduce to a minimum the amount of soil erosion resulting from road construction, harvest activity, or slash disposal commensurate with practical harvesting procedures and reasonable costs.
- H. Protection of Other Resource Values. Any forest product sales that are made on lands having significant existing or potential archeological, scenic, recreation, riparian, wetland, or fishery, values shall be planned as a minimum, in such manner so as to be fully consistent with the applicable land use plan and allowable cut assumptions. Additional considerations may be given on a case by case basis when justified.
- I. Threatened and Endangered Species. Each sale plan will provide for protection of any threatened and endangered species likely to be effected by the proposed action.

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- I. Advertised Sales.
 - A. Advertising. Advertising is accomplished through a formal publication and posting process. (See Handbook 5430-1, Advertisement.)
 - B. Access to Sale. Except as provided for by 43 CFR 5401.0-6(a), legal access to the sale area shall be available to all qualified bidders. Easements or rights-of-way shall be secured by the Bureau prior to advertising when needed to guarantee access. (See 43 CFR 2800 and Manual Section 2130.)
 - C. Appraisal. All advertised forest product sales shall be valued by an appraisal method based on comparable sales data or a conversion return method, whichever is determined to be in the public interest.
 - D. Bidding. An advertised sale shall be conducted by use of sealed bids or by written bids followed by oral auction. As a general rule, the oral bid procedure will be used unless bid history for a given area shows that oral bidding is not in the public interest. The Contracting Officer may direct the bidding procedure to be used for advertised sales.

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III. Other Than Advertised Sales.

- A. Situations Suitable for Non-advertised Sales. Sales may be made without advertising or use of competitive bidding in the situations described below.
1. Volume Less than 250 Thousand Board Feet. If the Contracting Officer determines a sale of small volumes of timber to be in the public interest, such sale may be made without advertising or calling for bids. Generally, sales in this category are made to salvage dead or dying timber, if the public interest is best served by quick sale and removal rather than delay for formal advertising. Include a written justification for dispensing with competitive bidding as part of the official sale record.
 2. Right-of-Way Timber.
 - (a) Permittee Under 43 CFR Group 2800. It is normally in the public interest to make a negotiated sale of timber on a right-of-way and danger trees adjacent to the right-of-way to the holder of a right-of-way permit issued under the regulations set forth in 43 CFR Group 2800. There is no limit on volume of timber sold; however, advance payment in full for the right-of-way timber is required.
 - (b) Contractors Constructing a Road with Government Funds. A contractor who has a contract to construct a road with government funds may buy the timber situated on the right-of-way and danger trees adjacent to the right-of-way directly from the government. There is no limit on the volume of timber sold.
 3. Public Works or Public Agencies. Negotiated sales may be made if the contract is for the disposal of forest products to be used in connection with a public works improvement program on behalf of a Federal, state or local government agency, provided the urgency of the project does not allow sufficient time for competitive bidding. There is no limitation on the volume of forest product sold.
 4. Competition Impracticable. If the Contracting Officer considers it impracticable to obtain completion, a sale of forest products may be made without limit as to volume. Generally, additional sales to existing forest product sale contracts are made under this authority. When and if other sales are made under this authority, the action must be supported with a written justification stating the reason why the sale was not exposed to competitive bidding. There is no limitation on the volume of forest product sold.
- B. Sales to Bureau Employees. The sale of fuelwood or other vegetative resources to Bureau employees is permitted. When such sales to Bureau employees are contemplated, the following rules shall apply so as to preclude favoritism or conflict of interest or the appearance of conflict of interest or the appearance of conflict of interest:
1. Employees will be treated the same as the general public.
 2. Acquisitions must be from established areas open to the public for the same species/materials.

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3. Quantities acquired will not exceed that which is normally sold for personal use.
 4. Employees will pay the same price as the public for the products.
 5. Acquired products must be for personal use and shall not be resold or used commercially.
 6. Employees will not participate in advertised sales.
 7. Employees must not issue the contract for self.
 8. Products will not be removed on government time or with government equipment.
- C. Appraisal. An appraisal based on comparable sales data is the preferred method for appraising other than advertised sales. Sales shall not be sold at less than the BLM appraised value.

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IV. Cooperative Jurisdiction and Administration.

- A. Sale from Withdrawn Lands. Forest products on lands withdrawn under the authorities cited in 43 CFR Group 2300 may be subject to BLM management and sale, depending on the specifics of the order of withdrawal and agreement with agencies involved.
1. Lands Withdrawn for Power Purposes by the Federal Power Commission. Authority for BLM sales of timber and other vegetative resources from lands classified, withdrawn or reserved for power purposes is contained in a memorandum of understanding and subsequent letters of agreement between the Federal Power Commission and the Department of Interior. (Refer to National Level Memorandum of Understanding WO-12, Power Withdrawals and Right-of-Way Permits, July 20, 1966, FPC/INT.) BLM may sell timber and other vegetative resources from lands partly or wholly occupied under permit or license issued by the Federal Power Commission without receiving prior written consent of the licensee or permittee, provided removal of the timber or materials does not unreasonably interfere with the development of the power project by the FPC licensee or permittee.
 2. Lands Withdrawn for Irrigation Purposes by the Bureau of Reclamation. Authority for BLM sales of timber and other vegetative resources from lands withdrawn for irrigation purposes is contained in a memorandum of agreement between the Bureau of Reclamation and BLM. (Refer to National Level Memorandum of Understanding WO-194, Management of Reclamation Withdrawn Lands and Resources Common to Both Agencies, BLM/BR.)
- B. Sales to Small Business Concerns. Programs to aid and assist qualified small business concerns have been formulated by the Small Business Administration (SBA) and the Department of the Interior and BLM.
1. Set-Aside Program. National Level Memorandum of Understanding WO-11 between the U.S. Department of the Interior and SBA with respect to timber and forest products, dated March 10, 1959, and amended July 25, 1966 (Appendix 1), sets forth agreement to establish a small business timber sales program to assure accomplishment of the objectives of the Small Business Act. BLM and SBA subsequently developed procedures for implementing a small business set-aside timber sale program and agreed to activate the set-aside program in western Oregon on January 1, 1974. Under this program, appropriate sales of timber and related forest products on lands under the jurisdiction of the Bureau of Land Management are set aside for small business competition. The objective is to assure that a fair proportion of the total sales of Federal timber are made available to small business. (Refer to Appendix 1.)
 - (a) Annual Timber Sale Plan. See Handbook 5410-1, Annual Timber Sales Plan for detailed instructions for identifying possible set-aside sales in the annual time sale plan.
 2. Access Road Loan Program. The construction of access roads under the terms of timber sale contracts occasionally requires more working capital than that available to small business concerns in the timber industry. For this reason, a road loan program allows BLM timber purchasers who qualify as small business concerns to borrow funds through SBA to finance construction of the required timber access roads. (Refer to National Level Memorandum of Understanding WO-14, Timber Sales and Loans, May 18, 1962, BLM/SBA.) (Appendix 2.)

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- C. Integrated Timber Sales. Interagency agreement, between the Forest Service and BLM, provide for integrated timber sales. The agreement provides guidance for supplemental field memoranda of understanding if timber administered by the BLM is to be combined with timber administered by the Forest Service into an integrated timber sale. (Refer to National Level Memorandum of Understanding WO-35, Integrated Timber Sales, September 27, 1972, BLM/FS.) (Appendix 3)

NOTE: If agreement(s) with other Federal or State agencies are in place they should be included here.

1. Scale Sales. Unless the criteria in 43 CFR 5422.2(b) are met, do not use third party scaling as a basis for determining BLM's share of receipts from an integrated timber sale.
- D. Sales on Road Rights-of-Way. BLM and Forest Service have written agreements and procedures regarding jurisdiction, disposal and sale of right-of-way timber located on BLM and Forest Service lands when road construction or improvement is planned by one agency on the lands of the other. (Refer to National Level Memorandum of Understanding WO-140, Right-of-Way and Road Use, May 20, 1980, BLM/FS.) (Appendix 4.)

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Glossary of Terms

-A-

advertised sale: an offering or sale of forest products using competitive bidding procedures following formal publication and posting of a notice of sale.

annual forest product sale plan: a short-range plan for all sales of forest product from a given area during the fiscal year.

-C-

contracting officer: The Bureau of Land Management official who would have authority to execute a forest product contract and delegate authority to take action in connection with such contract.

-I-

integrated forest product sale: a sale which includes both Forest Service, or other Federal or State agency, and BLM forest product in one forest product sale contract administered by the appropriate District Manager or Forest Supervisor or appropriate official of other Federal or State agency.

-M-

other than advertised sales: a sale of forest products which is made without formal publication and posting notice of sale and without use of competitive bidding procedures. (Synonyms: unadvertised sale, non-advertised sale, negotiated sale.)

other vegetative resources: all vegetative material which cannot be measured in board feet, such as, cactus, Christmas trees, pine nuts, ferns and tree boughs.

-S-

set-aside sale: a timber sale offering which is limited to bidding by qualified small business concerns.

small business concern: a private business which meets the criteria for small business established by the Small Business Administration in its regulations (13 CFR Part 121) under the authority of Section 15 of the Small Business Act of July 18, 1958 (72 Stat 384).

-T-

timber: standing trees, downed trees, or logs which are capable of being measured in board feet.

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COPY

WO-11

FOREST PRODUCT SALES
AGREEMENT OF MARCH 10, 1959
BETWEEN DEPARTMENT OF INTERIOR - SBA
PROVIDES FOR TIMBERLAND FOREST PRODUCT SALES TO
SMALL CONCERNS

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES
DEPARTMENT OF THE INTERIOR AND THE SMALL BUSINESS
ADMINISTRATION WITH RESPECT TO SALES TO SMALL CONCERNS
UNDER THE JURISDICTION OF THE BUREAU OF LAND MANAGEMENT

1. The United States Department of Interior (USDI) and the Small Business Administration (SBA) shall utilize the authority of Section 15 of the Small Business Act (15 U.S.C. 631, et seq.) as a means of accomplishing the declared policy of the Congress that a fair proportion of the total sales of Government property is made to small business enterprises as defined by SBA. USDI and SBA agree that in certain instances it may be in the interest of assuring the accomplishment of this objective to set aside appropriate sales of timber and related forest products on lands under the jurisdiction of the Bureau of Land Management (BLM) for small business competition only, when consistent with the program requirements of the BLM and the purposes of the Act.
2. SBA shall be afforded a reasonable opportunity to review, prior to publication, BLM annual timber sale plans which shall indicate the location of the tracts involved and the estimated volume of timber to be offered by BLM on each tract. SBA may request of BLM contracting officers, in writing, set-asides under authority of Section 15 of the Small Business Act. When such set-asides are agreed to, the BLM will consult with SBA concerning financial and other performance qualification to be included to conditions of sale.
3. The contracting officer shall provide for set-asides in those requested instances unless he determines that such action is inconsistent with the program requirements of the BLM, or contrary to the interests of sound sales policies in which case BLM will submit its reasons for refusal to SBA in writing.

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COPY

WO-11

4. The foregoing request by SBA and the action of the contracting officer as contemplated by paragraphs two and three of this agreement shall be made when SBA and the contracting officer determine such action is in the interest of assuring that a fair proportion of the total sales of Government property be made to small-Business concerns.
5. The contracting officer shall request the SBA to concur in a withdrawal of a set-aside if after it has been agreed to, subsequent events indicate that such action would not be in the best interests of the Government. If the SBA representative does not concur, he will be given an opportunity to express his opinion but the final decision for all sales action will remain with the contracting agency.
6. The contracting officer shall not declare a small business enterprise, as defined by SBA, which might otherwise have been awarded a contract to be disqualified on the grounds of lack of capacity to perform or of inadequate financial qualifications, without affording SBA an opportunity to process a certificate of competency. In such cases, BLM shall give SBA all pertinent available information in regard to the company and the sale in question, including the price offered by the three highest bidders. SBA shall take prompt action on the case and submit a decision to BLM as soon as possible. BLM shall withhold final action for 15 working days if SBA requires that much time to render a decision.
7. BLM and SBA shall develop jointly detail of operational procedures designed to carry out this Memorandum of Understanding, the Administrator of SBA may, with 20 working days from the date of disagreement, submit the question for determination to the Secretary of the Interior before final action is taken by the BLM.

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8. If SBA and BLM fail to agree on any matter relating to a set-aside under this Memorandum of Understanding, the Administrator of SBA may, within 20 working days from the date of disagreement, submit the question for determination to the Secretary of the Interior before final action is taken by the BLM.
9. A concern to be eligible for preferential award of a Set-aside sale must certify that it qualifies as a small business enterprise as defined by the SBA. The SBA shall determine when certifying concerns do not comply with the provisions of the small business certification.
10. When size violations are determined to have occurred, the names of the offenders shall be forwarded to the appropriate Bureau of Land Management office, Department of the Interior, by SBA for listing. During the period such concerns are so listed, they shall not be eligible for preferential award of set-aside sales by the Bureau of Land Management. ^{1/}

/s/ Wendell B. Barnes
Administrator, Small Business Administration

March 10, 1959
Date

/s/ Elmer F. Bennett
Acting Secretary of the Interior

March 10, 1959
Date

^{1/} Sections 9 and 10 are added as instructed per Amendment 8/25/66.

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WO-14

TIMBER SALES AND LOANS
AGREEMENT OF MAY 18, 1962
BETWEEN BLM - SBA
PROVIDES FOR TIMBER SALES AND LOANS

Pursuant to the authority contained in Public Law 86-649, 74 Stat. 506, and the Small Business Act, 72 Stat, 384, the Department of the Interior, acting through the Director, Bureau of Land Management (BLM) and the Small Business Administration (SBA), have entered into this cooperative agreement on the year, month and day subscribed below.

WITNESSETH:

WHEREAS, it is the declared policy of the Congress and of the President of the United States to aid and assist qualified small businesses by making loans to them ; and,

WHEREAS, in the sale of timber by BLM from the lands administered by it, the construction by the purchaser, according to specifications, of access roads is frequently required as a condition of the timber sale contract; and,

WHEREAS, the construction of such access roads requires that that timber purchasers have large sums of working capital substantially in excess of those carried by small businesses in the timber industry; and

WHEREAS, therefore, some potential purchasers of timber from lands administered by BLM may have been prevented from bidding in at sales of such timber; and,

WHEREAS, BLM and SBA agree that it is desirable for SBA to use its authority under Section 7(a) of the Small Business Act (15 U.S.C. 631), as amended, to make available to successful small business bidders loans for the construction of access roads requires to be constructed in connection with sales of timber.

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by BLM and for BLM to assist and cooperate with SBA in the making of such loans;

NOW, THEREFORE, in consideration of the promises herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS

- 1.01 BLM Timber Sale shall mean any “cruise” type, advertised sale of timber from any lands administered by the BLM in accordance with the provisions of the applicable regulations of the Department of the Interior.
- 1.02 Access Road shall mean a permanent type timber hauling road either major spur or mainline required to be constructed under the terms of a BLM timber sale contract, the applicable regulations, including 43 CFR 115.154 – 115.179, and the practices applicable to other logging roads administered by BLM. It does not include temporary spur roads which are semi-permanent or unimproved type timber hauling roads required to be constructed under the terms of a BLM timber sale contract.
- 1.03 A successful small business bidder shall mean any concern which (1) is the qualified high bidder at any Bureau of Land Management timber sale and, (2) meets the criteria for a ‘small business concern’ established by Title 13, chapter I, Part 121 of the Code of Federal Regulations, as amended.

^{1/} Paragraph 1.03 as amended 6/7/66.

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- 1.04 Access Road Loan shall mean a loan made by SBA to a successful small business bidder in a BLM timber sale for the construction of an access road; provided, however, that the amount of such loan shall not, at any time, exceed 80 percent of BLM's initial estimated appraisal construction costs made prior to sale. Access road loans shall be made by SBA on this basis and progress disbursement will be made only for those portions of the road actually constructed and for which BLM has certified to SBA that the construction is in accord with BLM's minimum specifications.

ARTICLE II

SBA LOANS

- 2.01 Within 5 working days after receipt SBA of documents listed in 3.02, SBA will notify BLM whether or not it intends to make an access road loan to such bidder. If no notice is received by BLM within the time specified or if SBA notifies BLM that it does not intend to make as access road loan, then BLM may take such other action as may be authorized by the applicable timber sale regulations.
- 2.02 At the time SBA notifies BLM of its intention to make an access road loan, or as soon thereafter as practicable, SBA will transmit to BLM two copies of the loan authorization, and shortly thereafter the schedule of repayment. The schedule of repayment shall be timed to the BLM timber sale contract installment payments exclusive of the initial and second installment. Access road loan repayment will be in addition to timber sale contract installment payments and the final installment on the access road loan shall be in such amount as SBA may determine will finally discharge the timber purchaser's remaining outstanding access road loan obligations.
- 2.03 SBA will provide BLM and the purchaser with a notice of the final loan payment due just prior to the date scheduled for the final timber sale installment payment.

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ARTICLE III

BLM OBLIGATIONS

- 3.01 Upon approval by SBA of an access road loan, BLM will provide SBA with the following service:
- (a) Bill and receive loan repayments from the purchaser on the basis of the SBA repayment schedule.
 - (b) Deposit loan repayments as received into a specified SBA account in the U.S. Treasury and make reports to SBA on billing, collection, and cutting.
 - (c) Upon request, BLM will, if such is the case, certify in writing to SBA that the access road, or portion thereof, for which an access road loan is to be made is in compliance with the BLM's construction requirements.
 - (d) Notify SBA in writing when all access road construction is completed as required under the terms of a timber sale contract.
 - (e) BLM will insert in timber sale contract the requirement schedule of the access road loan which is set forth in the borrower's loan authorization.
- 3.02 BLM will make available the following to SBA when SBA receives an application from a successful small business bidder for an access road loan:
- (a) Copies of sample or executed contracts which will show the timber payment schedule.
 - (b) Copies of plans and specifications for all roads to be constructed under the terms of a timber sale contract.

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- (c) Copies of BLM estimate of construction cost for access roads required under the terms of the timber sale contract.
- 3.03 BLM agrees to include the following in the general information section of the sale prospectus when applicable.
- (a) Small business concerns may apply to SBA for loan to provide financing for access road construction required under the terms of the timber sale contract, and necessary contract changes will be made. BLM will also make available sample sale contracts to prospective bidders to illustrate the requirements to be met in providing for repayment of an access road construction loan.

ARTICLE IV

MUTUAL OBLIGATIONS

- 4.01 It is agreed that upon termination of the timber sale contract, all rights, privileges and jurisdiction in any roads constructed in connection with any BLM timber sale contract shall be vested in BLM, and SBA shall have no interest therein.
- 4.02 If a timber sale purchaser who has an unpaid access road loan obligation to SBA fails to complete the cutting of the timber in accordance with the terms of the contract, BLM will promptly notify SBA thereof. If the failure to complete such cutting within the original contract period is due to circumstances beyond the control of the timber purchaser, as determined by the BLM, the latter, if so requested by the purchaser, may extend the original cutting period in accordance with the contract terms and applicable regulations.

In the event circumstances do not warrant a contract extension, the decision to terminate the contract will be the responsibility of the BLM, in which event the provisions of Article V, Sections 5.01 will apply.

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- 4.03 The authority under the terms of a timber sale contract to suspend or terminate operations under such contract for any violations, including delinquent payments on SBA loans, shall be with the BLM.
- 4.04 BLM and SBA shall develop jointly details of operational procedures designed to carry out this agreement.
- 4.05 If SBA and BLM shall fail to agree on any matter relating to an access road loan, the Administrator of SBA may, within 20 working days from the date of such disagreement, submit the question for consideration and determination to the Secretary of the Interior before final action is taken by BLM.

ARTICLE V

DEFAULTS

- 5.01 If a timber sale on which a purchaser has obtained an access road loan from SBA expires or is terminated prior to full repayment of the loan, BLM will, as a matter of general policy offer the uncut timber included in the expired contract for resale; but the decision to do so is in its sole discretion. In the resale of such timber BLM shall provide for the recovery of the remaining unamortized cost of construction of the access roads, which is due and owing under the previous loan agreement to SBA. This sum, which will include interest due prior to default shall be paid over to SBA, as received from the new purchaser, and shall thereafter relieve BLM of any further duties or obligations to SBA in connection with the latter's progress loan to the original purchaser.
- 5.02 In the event of litigation, SBA and BLM agree to a joint action and will pro-rate judgments which are equal to less the full recovery and each will release the other from any further obligations under this agreement in connection with the sale or loan for which litigation was instituted.

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ARTICLE VI

DURATION - TERMINATION

- 6.01 This agreement may be amended or modified, and shall remain in effect until terminated by mutual agreement of the parties hereto, or by either party hereto, giving not less than 30 day's prior notice to the other of such termination.

IN WITNESS WHEREOF, the parties hereto have executed this cooperative agreement as of this 18th day of May 1962.

/s/ Karl S. Landstrom
Director, Bureau of Land Management
U.S. Department of the Interior

/s/ John E. Horne
Administrator,
Small Business Administration

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WO-35

INTEGRATED TIMBER SALES
INTERIM AGREEMENT OF SEPTEMBER 27, 1972
BETWEEN BLM - FOREST SERVICE
PROVIDES FOR INTEGRATED TIMBER SALE CONTRACTS

FOREST SERVICE - BUREAU OF LAND MANAGEMENT
COORDINATING POSITION PAPER FOR INTEGRATED TIMBER
SALE CONTRACTS

J. Definition. An integrated timber sale is a sale including both Forest Service Bureau of Land Management timber in one timber sale contract, to be administered by the appropriate District Manager or Forest Supervisor.

II. Purpose. To provide for timber sales involving both Forest Service and Bureau of Land Management timber to be offered for sale by either agency.

III. Objective. To increase efficiency and effectiveness of operations for the management, use, planning, protection, and development of all forest land resources involved.

IV. Authority.

A. Oregon and California Revested Lands Act. (PL 75-405; 50 Stat. 874; 43 USC 1181a.) encourages coordinated administration with Federal administrative agencies.

B. Economy Act. (PL 72-212; 47 Stat. 387; 31 USC 686, 686C) authorizes reimbursable transfer of material and services between Federal agencies.

V. Responsibilities. Appropriate Regional Forester (FS) and State Director (BLM) identify the need, prepare a project agreement and make working arrangements for an integrated timber sale contract.

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VI. Division of Responsibilities.

A. Both agencies may perform the complete preparation and administration of an integrated sale jointly for the other. In determination as to whether the various duties shall be allocated between the two or be undertaken by one agency, the following will be taken into account:

1. The capabilities of an agency that render services more economically because of location or availability of personnel.

2. Impact of the administration of sale on adjoining agency lands and replaced programs and uses of all forest land resources involved.

VII. Criteria for Establishment of an Integrated Timber Sale.

A. Timber on either FS or BLM administered lands are insufficiently to form an economic unit if sold or managed separately.

B. Significant economic, biological, environmental and other values will be realized by including FS and BLM timber in one sale.

VIII. Reimbursements. The division of work, services or responsibilities shall be approximately equal in value and offsetting. In case services provided are no equal in value, reimbursements may be made for direct costs.

IX. Documentation. Accounting requirements, receipts, share of the total proceeds, deposits for road maintenance and other fiscal arrangements shall be documented in writing as mutually agreeable.

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X. Implementation. This project agreement is effective upon approval by the Chief, Forest Service, and the Director Bureau of Land Management, and authorized appropriate Regional Foresters and State Directors to enter into a contract agreement using Forest Service or BLM forms when it is appropriate. This agreement is renegotiable at the option of either party.

In witness whereof, the parties have executed this position paper as of SEP 27 1972.

BUREAU OF LAND MANAGEMENT

FOREST SERVICE

By /s/ Irving Senzel _____
Title: Acting Director

By /s/ E. W. Schultz _____
Title: Acting Chief, Forest
Service

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H-5400-1 - SALES OF FOREST PRODUCTS

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United States Department of Agriculture
Forest Service

United States Department of the Interior
Bureau of Land Management

I. Purpose. This agreement provides procedures for granting and acquiring property rights by each agency from the other necessary for road use, construction, improvement, maintenance, and transferring jurisdiction of roads.

For the purpose of land management under the principles of multiple use, including the removal of forest and mineral products, the procedures set out herein are established for the use of roads and lands under the jurisdiction of the Forest Service and the Bureau of Land Management.

II. Authority.

A. Bureau of Land Management

1. The Federal Land Policy and Management Act of 1976, (90 Stat. 2766; 43 U.S.C 1737) and (90 Stat. 2781; 43 U.S.C. 1767).

B. Forest Service

1. Organic Administration Act of 1897 (30 Stat. 34 as supplemented and amended; 16 U.S.C. 551) and the Federal Land Policy and Management Act of 1976 (90 Stat. 2781; 43 U.S.C. 1767).

III. Definitions. The following definitions are hereby adopted:

A. "The Agencies" means the Forest Service and the Bureau of Land Management.

B. "Road" means an existing road or interest therein on lands or easements administered by one of the agencies which the other agency needs to use in carrying out its functions; provided, the interest owned allows either qualified or unqualified use by the other agency.

C. "Management" means any of the multiple use activities on the lands under the jurisdiction of each agency including but limited to the harvesting and removal of forest and mineral products.

D. "Principal sale" means that timber sale to be served by the road, as opposed to the right-of-way timber on that road.

E. "Licensee" means any person who is authorized to remove mineral or forest products in commercial quantities from lands administered by either agency.

F. "Road construction" means the locating, relocating, clearing, constructing, or reconstructing of any road under the jurisdiction of either agency.

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- G. "Road improvement" means the improvement, widening, surfacing, or the locating of additional structures upon any existing road.

IV. Existing Roads.

Roads that are now existing or hereafter constructed or acquired are available for joint use as follows:

A. Road jurisdiction will not transfer.

1. Each agency is hereby authorized to use such roads in the exercise of its administrative function.
2. Contractors or permittees of the agencies shall be and are hereby authorized to use such roads for the removal of forest or mineral products upon the execution of a license agreement between the contractors or permittees and the agency having jurisdiction or control of the roads to be used. The form of such license agreement is attached hereto and designated Exhibit A and made a part hereof by reference. Upon written request, such license agreements shall be furnished unsigned to the requesting agency prior to advertising, sale, or the removal of timber or mineral materials.
3. If the grants to the United States will permit, licensees of each agency shall be authorized to use roads constructed or controlled by third parties. Such use shall be subject to and limited by the terms and conditions of the agreements or grants to the United States.

Where there is an unliquidated collection right against the United States timber or mineral products on such a road, the license agreement issued by one agency to the timber or mineral purchaser of the other will contain a provision requiring payments as authorized by the terms of the collection right or a higher payment as agreed to by the two agencies.

4. Nothing in this agreement shall have the effect of curtailing or limiting the administrative use of the agency having the primary administrative control, which control must remain paramount in the event of a conflict.
5. It is understood that if the rights of one agency across private lands are inadequate for the use of the other agency, the latter may acquire additional rights in the name of the United States.
6. Upon completion of the sale or contract for which the license is issued and all requirements of the license agreement have been satisfied, the requesting agency shall notify the Licensor that the bond may be released.

B. Road jurisdiction will transfer.

1. If it is agreed to by both parties that the transfer of road jurisdiction is desirable and will result in a more reasonable, manageable transportation system, the procedure set forth under Section V.A. - "Construction or Transfer of Roads" shall be followed to accomplish the transfer.

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C. Road Improvement.

In the event one agency seeks the use of a road under the jurisdiction of the other that will require improvement to serve the proposed use, the two agencies will confer at the annual meeting, or at any other time as necessary. Transfer of jurisdiction will be considered, particularly where mutual transportation planning indicates such action. If transfer is not appropriate, the agencies will determine which agency will be responsible for improving the road. The improving agency will be permitted to recover a portion of its investment from any subsequent third party, non-United States users.

If transfer is determined to be appropriate, the agency to which the road is to be transferred shall file an application as set forth in Section V.A. of this agreement.

Any road improvement to be made by one agency upon a road under the jurisdiction of the other agency shall be made pursuant to the written application (Exhibit D – original and one copy) by the constructing agency. The agency having jurisdiction over the road will review the application, and, if in order, the approving agency will execute it and forward a copy to the requesting agency. Any conditions and standards in the approval shall be inserted in the License Agreement to be executed by the licensee and the agency having jurisdiction over the road.

D. Road Maintenance.

Each agency or its licensee shall be responsible for performing the work to maintain the road or for payment of pro rata maintenance expense. The pro rata maintenance expense shall be determined by the total use of the road or part thereof by the agencies. Each year, the agencies shall mutually agree insofar as its possible, upon the required maintenance and resurfacing work to be done upon the particular road(s) involved. Agency expenditures for the benefit of the other agency's use shall be reimbursed by the benefitting agency under the Act of June 30, 1932, as amended (31 U.S.C. 686), or it shall make other arrangements to provide funds to meet such expense. Maintenance work shall include such work as is reasonably necessary to place the particular road in a satisfactory condition for use, to keep it in such condition, and to reasonably protect said road from weather conditions, and may include blading and shaping, watering or oiling, ditching, repair of drainage improvements, slide removal and such other measures as may be required by the agency having jurisdiction. Upon discontinuing use of a road or any portion of a road, the road shall be placed, as minimum requirement, in as good a condition as it was prior to commencement of use.

E. Road Use Rules.

Roads that are jointly used shall be subject to reasonable road use rules to be administered and enforced by the agency having jurisdiction. Both agencies shall jointly make a periodic study and review of such roads. Road rules shall be uniformly applicable to all road users, and may include, but not be limited to, matters of speed, load limits, fire and safety equipment, and road closures. The road rules will be posted and made available to the road user.

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V. Construction or Transfer of RoadsA. Construction.

It is understood that prior to construction or transfer of a road by or for one agency on lands under the jurisdiction of the other, status will be cleared through the appropriate office of the administering agency. Concurrently therewith, an application in the form of Exhibit B shall be completed by the constructing agency and the original and two copies submitted to the appropriate Forest Supervisor or District Manager with the required attachments. After review and any necessary consultation, the administering agency will execute a Right-of-Way Reservation in the format of Exhibit C and forward the original to the constructing agency.

B. Timber.

The clearing limits on each side of the road centerline shall be designated by the constructing agency. Unless otherwise agreed upon, such timber shall be cruised, appraised and sold by the agency having jurisdiction of the timber.

The following methods may be used for timber disposal:

1. The agency having jurisdiction of the right-of-way timber may sell it and have it removed prior to road construction.
2. The party constructing the road may be required to buck the timber into standard log lengths and deck the logs at locations designated along the right-of-way by the agency having jurisdiction of the timber.
3. The party constructing the road may be required to buy the timber from the agency having jurisdiction of the timber prior to cutting the timber. The timber will be sold lump sum based on the cruise and appraisal of that agency. The appraisal shall be on a stumpage basis with no road construction cost allowance.
4. Where the purchaser of a principal sale is to construct the road, the purchaser may be required to buy the right-of-way timber. Such timber shall be appraised by the agency having jurisdiction of the timber. Appraisal shall be on a stumpage basis with no road construction cost allowance. Following the receipt of bids on the principal sale, the sale price for right-of-way timber shall be determined by increasing the appraised or advertised price of the right-of-way timber, species by species, by the monetary difference between the appraised or advertised and bid prices of the principal sale.

When method 3 or 4 is used, the necessary timber sale contracts shall be furnished to the constructing agency prior to the advertising of the constructing agencies road contract, timber, or mineral products sale.

In the event that the road is constructed by the United States through a road Contract or by force account, the agency having jurisdiction of the timber will specify the method of disposal after consultation with the constructing agency.

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C. Minerals.

In the event saleable or leasable minerals are known to be within the right-of-way or discovered subsequent to the commencement of construction, the agency having jurisdiction over the minerals shall make arrangements with the constructing agency for sale or stockpiling.

VI. General Provisions.

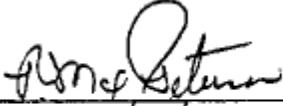
A. Expenditure of Appropriated Funds. Nothing in this agreement shall require either agency to spend money in excess of appropriations.

B. Termination of Agreement. This agreement shall remain in effect unless terminated by mutual agreement or one agency giving the other agency ninety (90) days prior written notice. Such notice and termination shall not affect any outstanding rights under this agreement that are held by either agency over lands of the other agency. All outstanding rights will either continue or terminate in accordance with the terms of the document with which they were acquired.

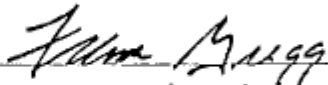
C. Annual Meeting. Each year during November or December, representatives of the regional, State, district, and forest offices shall meet to review joint transportation planning, desirable transfers of road jurisdiction, joint use, maintenance, improvement and construction of roads within their respective jurisdictions. It is the responsibility of the respective forest supervisors and district managers who share routes of access to arrange such meetings, unless it is determined among them that such a meeting is not desirable. The annual meeting will also be utilized to discuss problems associated with the use of the agreement and decide upon a mutual course of action to solve the problems. Issues that cannot be resolved at the State Director, Regional Forester, level are to be referred to the respective Washington Headquarters Office.

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

BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C.



Date: 5/20/80



Date: 5/20/80

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Exhibit A

Agreement No. _____

LICENSE AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 19__ by and between _____ hereinafter called "Licensor" and _____ hereinafter called "Licensee."

WITNESSETH

WHEREAS, Licensee has purchase _____ (Mineral Material or Timber Sale) or _____ Certain Forest Products or Mineral Products, under (permit) or (contract) dated 19__, Number _____, located in (Sec., T&R, County, Sate) or appropriate geographic location and desires to use roads under the jurisdiction of the Licensor in order to (operate said sale) (remove said products, and

WHEREAS, Licensor is willing grant said access subject to the terms and conditions set forth herein,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Licensor hereby grants to Licensee a nonexclusive license to use the existing roads of the Licensor as listed in Section 3 of this Agreement, and shown on the map attached hereto.
2. Said existing roads shall be open at all times to full use and enjoyment by the Licensor and its permittees for any and all purposes deemed necessary or desirable in connection with the control, management and administration of Licensor's land or the resources thereof, and insofar as compatible therewith, use by the general public.
3. Licensee shall maintain the road or shall pay his proportionate share as indicated below. Maintenance shall include all expenditures reasonably necessary to place the road in satisfactory condition for heavy hauling, to keep it in such condition, and to reasonably protect the road from winter weather. Maintenance also includes replacement of surfacing lost through wear or displacement resulting from the use of the road.
 - A. 1/ Licensee shall maintain the following roads in accordance with the Specification shown in the aforesaid (timber sale) (mineral sale or lease) (permit) (contract) or (in Exhibit _____ attached hereto):

<u>Road No.</u>	<u>Segment</u>	<u>Miles</u>	<u>Applicable Specification</u>
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1/ Use, A, B, C, D, or E, or any combination applicable

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- B. ^{1/} Licensee shall make payments into a cooperative account for maintenance to be performed by Licensor at the following rates:

<u>Road No.</u>	<u>Segment Miles</u>	<u>\$/Mbdft</u>	<u>\$/cu yd</u>
-----------------	----------------------	-----------------	-----------------

- C. ^{1/} Licensee shall replace surfacing on the following roads in accordance with the provisions shown in Exhibit _____, attached hereto.

<u>Road No.</u>	<u>Segment</u>	<u>Miles</u>
-----------------	----------------	--------------

- D. ^{1/} Licensee shall make payments into a cooperative account for resurfacing to be performed by Licensor at the following rates:

<u>Road No.</u>	<u>Segment</u>	<u>\$/Mbdft</u>	<u>\$/cu yd</u>
-----------------	----------------	-----------------	-----------------

- E. ^{1/} With the prior written approval of the Licensor, the Licensee may arrange for cooperative maintenance with other users of the roads described above; provided, that such cooperative arrangement shall not relieve the Licensee of his liability for the maintenance and repair of the road.

4. The Licensee shall comply with the following requirements:

- A. No commercial timber or minerals shall be cut, mined, removed, or destroyed on the right-of-way unless Licensee first obtains specific authority from Licensor.
- B. Licensee shall take adequate precaution to prevent and suppress forest, brush, and grass fires and shall endeavor with all reasonably available personnel to suppress any fire originating on or threatening the right-of-way. Licensee shall do no burning on or near the right-of-way without a State permit during seasons when permits are required, and shall set no fires on or near the right-of-way that will result in damage to any natural resource or improvement.
- C. All truck drivers shall have a valid chauffeur's license.

^{1/} See footnote on preceding page

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- D. Licensee shall abide by all reasonable traffic regulations imposed by the Licensor provided, however, such regulation shall be uniformly applicable to all users of the road, including Licensor.
- E. ^{2/} _____ Company retains a collection right on this road. Licensee shall pay (\$ _____ lump sum) (\$ _____ per Mod. ft.) (\$ _____ per cu. yd.) (to _____ Company) (to Licensor for transmittal to the Company.)

Any lump sum payment shall be made prior to start of hauling. Per Mod. ft. or per cu. yd. payments shall be made on or before the 25th day of each calendar month for all forest or mineral products hauled in the preceding calendar month. Such payments shall be accompanied by a copy of the applicable timber cutting report or weight slip or other appropriate documentation if minerals are involved, certified as correct by the officer in charge of the sale.

5. All of Licensee's equipment operating upon the road shall be maintained in a good and safe operating condition and shall be operated cautiously so as to minimize accidents or hazards.
6. Licensor may suspend the use of the road during periods when the forests are closed by lawful authority. Licensor may also suspend the use of the road when, due to weather conditions, unrestricted use would cause excessive damage to the road. Any suspension shall be applicable to all heavy haulers on the road.
7. Licensee shall not construct landings for loading logs nor yard logs on the road without express written permission from Licensor. Licensee shall not permit slash or debris from its operations to fill in or close the ditches or culverts of the roads.
8. The Licensee shall provide a performance bond in the amount of \$ _____, acceptable to the Licensor, conditioned upon faithful performance of this agreement ^{3/} (and shall obtain comprehensive liability insurance covering all operations, including vehicles, of the Licensee under this agreement in the amounts not less than the following: (a) bodily injury, \$ _____ for injury or death of one person, \$ _____ for any one occurrence; (b) property damage, \$ _____ for any one occurrence. ^{4/}

Before exercising any of the rights granted herein, the Licensee shall deliver the required bond to the Licensor (and shall deliver a certificate from the insurance company stating that such insurance is in force that the insurance company will give to the Licensor 10 days written notice prior to any cancellation or modification of such insurance, together with evidence that all automotive equipment to be used by the Licensee is covered by insurance).^{4/} any insurance or bonding company furnishing bonding or insurance services required by this license shall be duly authorized to do business in the State of _____ and registered pursuant to its statutes.

^{2/} Delete if not applicable

^{3/} Performance bond will normally be computed at the rate of \$500 per mile or fraction thereof, to a \$10,000 maximum

^{4/} Generally, insurance will be required only in those cases where underlying easements or agreements require road users to have insurance and shall be required only in the amount required by the easements or agreements.

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- 9. Concurrently with conclusion of Licensee's use of said roads, Licensee shall clean up and remove from the road or right-of-way all debris, refuse and waste material which may have resulted from Licensee's use or operations, shall repair any damage to the road resulting directly or indirectly from Licensee's use or operations; Provided however, that when Licensor is performing the maintenance of the road, Licensee shall not be required to repair any damage resulting from normal use of the road for the removal of forest or mineral products; Provided further that when Licensee is performing the maintenance the road shall be left in as good condition as when Licensee first began to use it.
- 10. The Licensee shall undertake every reasonable measure to minimize damage to waterways, streams, lakes, or reservoirs near the roads under this agreement. The Licensee shall immediately discontinue operations under this agreement upon receipt of written notice from an authorized officer that such operations or any part thereof are causing any damage or injury to the waterways and watercourses near the roads under this agreement.
- 11. The rights granted hereunder are not assignable without the prior written consent of the Licensor.
- 12. The Licensee shall maintain the right-of-way clearing by chemicals only after specific written approval has been given by the (BLM Authorized Officer) (Regional Forester). application for such approval must be in writing and specify the time, method, chemical(s), past to be controlled quantity of chemical to be used, and exact portion of the right-of-way that will be chemically treated.
- 13. By prior agreement between the Licensor and the (administering agency), the letter will be responsible for administration and enforcement of the terms of the agreement. A copy of any notice under this agreement shall be sent to the Licensor.)^{5/}
- 14. The terms of this Agreement shall be from the date hereto until the termination of the aforesaid timber or mineral contract or permit.

IN WITNESSWHEREOF, the parties have executed this Agreement in duplicate originals on the day and year first above written.

LICENSOR

By _____

Title _____

LICENSEE

By _____

Title _____

^{5/} Optional, if not used delete and renumber 14.

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Exhibit B

R/W No. _____

Serial No. _____

BLM-FS ROAD RIGHT-OF-WAY APPLICATION

1. Name of Agency	National Forest or BLM District	Date of Application
-------------------	------------------------------------	---------------------

Hereby applies for a right-of-way reservation across land administered by

_____ (Name of Agency) _____ pursuant to the
BLM-FS Right-of-Way and Road Use Agreement dated _____.

1. Legal description _____.

2. Specify period of time for which right-of-way reservation is requested.

Perpetual Term _____ (Years)

3. Plan and profile of road to be constructed is attached?

Attached On file at _____.
Identified as _____.

4. Construction specifications are attached?

Attached On file at _____.
Identified as _____.

5. Environmental assessment is attached?

Attached On file at _____.

6. Appropriate maps or right-of-way plat attached.

7. Right-of-way width _____ acreage _____.

Constructing Agency

By: _____

Title: _____

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Exhibit C

RIGHT-OF-WAY RESERVATION

KNOW ALL MEN BY THESE PRESENTS, That in accordance with Section 507 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2781, 43 U.S.C. 1767) that the United States of America acting by and through the (Bureau of Land Management, U.S. Department of the Interior), (Forest Service, U.S. Department of Agriculture), does hereby issue and reserve to the (Bureau of Land Management (Forest Service), and its assigns, a right-of-way to locate, construct, use, control, maintain, improve, and repair a road over and across the following described real property situated in the County of _____, State of _____, to wit:

The parcel of land to which the above description applies contains _____ acres, more or less.

A plat showing the right-of-way described above is attached hereto as Exhibit A and made a part hereof.

The right-of-way herein granted and reserved is for the full use of the above described property as a road by the (Bureau of Land Management) Forest Service), its licensees, permittees, agents, and contractors including the right of access for the people of the United States generally to lands owned, administered, or controlled by the UNITED STATES OF AMERICA subject to reasonable rules and regulations of the (Secretary of the Interior) (Secretary of Agriculture), and to the following terms and conditions:

1. The road constructed under the provisions of this right-of-way will be under the control and jurisdiction of the (Forest Service) Bureau of Land Management.
2. The agency having jurisdiction of the road alone may extend or grant rights and privileges for use of the road to other users, including members of the public and other Government Departments and Agencies, States, and local subdivisions thereof. Such grants may be in the form of regulations, permits, easements, or licenses, as appropriate.

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3. Any forest products or other resources on lands within the right-of-way shall remain under the jurisdiction of the issuing agency and may be severed or extracted and disposed of only in accordance with applicable law and regulation of the appropriate Secretary. The extraction, severance, and disposal of any such resources shall be subject to such stipulations, if any, that the agencies agree are needed to avoid unreasonable interference with the use of the road.
4. The (Bureau of Land Management) (Forest Service) retains the right to occupy and use the right-of-way, and to issue or grant rights-of-way or other land uses for other than road purposes, upon, over, under, and through the lands, provided that the occupancy and use will not unreasonably interfere with the rights granted herein.
5. This reservation shall remain in effect (until terminated by mutual agreement of the agencies.) (For a term commencing on the date shown below and continuing until _____, 19 ____.)

Dated this _____ day of _____, 19 ____.

Signature of Authorized Officer of Issuing Agency

Title

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Exhibit D

ROAD IMPROVEMENT APPLICATION AND APPROVAL

Date _____

The (Bureau of Land Management) (Forest Service) in accordance with the Cooperative BLM-FS Right-Of-Way and Road Use Agreement, dated _____ hereby requests approval of the following special conditions for the improvement of _____ (Number or Name of Road)

- 1. Location as shown on attached map of scale not less than 1 inch equals 1,000 feet. (Drawing No. _____, name, date, or other identification)
2. Construction Specifications for improvement
3. Slash Disposal Specifications
4. Maintenance
5. Other Conditions
6. Contract or Permit Designation
7. Timber Sale Allowance or Contract Cost of Improvement
8. Improving agency may collect road use fees from third party private users in an amount proportionate to third party use.

Constructing Agency:

Approving Agency:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

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