

**Forest Service Manual
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Forest Service Manual 5409.13 – Land Acquisition Handbook

Zero Code

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Approved by: F. Dale Robertson, Chief

Date approved:

Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

This amendment is a reissuance of FSH 5409.13 to conform the format and structure of the Handbook to the requirements of electronic directive issuance.

This amendment makes no substantive changes to the text. The only changes made are those necessary to meet new format requirements or to correct spelling, punctuation, or unit names.

This Handbook is now available electronically in the National Information Center in the same format as the paper copy. Henceforth, amendments to this Handbook will be issued to Forest Service units electronically on a document basis.

Table of Contents

05 - Definitions	3
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Forest Service acquisitions are subject to a variety of procedural requirements. While many procedures apply to all cases, some acquisitions must comply with additional specific legal or policy requirements. This handbook outlines these procedures and requirements, and provides technical guidance to those involved with land acquisition.

05 - Definitions

1. Abstract of Title. An abstract of title is a history of the title to land, consisting of a complete copy or synopsis of all instruments of public record that affect the title to a specific tract of land or any estate or interest in that land, together with a statement of all liens, charges, or liabilities to which the land may be subject, and of which the purchasers should be apprised. An abstract involves a title search from the grant or patent, which is the normal inception of each title to date, or for a limited period, as the particular case may require.

2. Administrative Site. An administrative site is an area of land acquired, withdrawn, or leased, and dedicated specifically for forest headquarters, ranger stations, dwellings, warehouses, scaling stations, fire-retardant mixing stations, guard stations, and similar administrative installations for conducting Forest Service activities. Sites may consist of one or more semicontiguous parcels and vary in size. Administrative sites are usually restricted to the area occupied by support buildings and grounds, and may be located within, adjacent to, or a considerable distance from a National Forest System unit.

3. Certificate of Title. A certificate of title is a form of title evidence prepared by a title company to show the conditions of ownership in a given real property, and guaranteeing that the records have been carefully searched and title is found to be as indicated in the certificate. The guarantee must comply with the standard limits of liability as described in chapter 50 of this handbook; however, there is no guarantee to defend the title, nor is there any protection against unauthorized conveyances, claims by or on behalf of incompetent grantor, or claims not of record at the time the certificate was issued. In this respect, a title certificate does not offer the security or protection of title insurance.

4. Cloud. A cloud is an adverse title, right, or lien that is apparently good, so far as disclosed by the records, but that is invalid, released, or barred by facts that could be produced in evidence, such as a deed of trust or mortgage that has been paid but not released; a conveyance upon conditions where the conditions had been fulfilled, although the fact is not shown of record; or a tax title that is valid at first sight, but in fact is void.

5. Composite. A composite is a geographical area with a complex of (existing or potential) recreation development sites and/or dispersed recreation areas with sufficiently strong interrelationships to be considered as a unit.

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6. Condemnation. Condemnation is the act of the Government exercising the right of eminent domain in taking property for public use and benefit, subject to the owner's right to just compensation.

7. Deed. The deed is the most common instrument for transferring title. It may be executed either voluntarily by individuals, partnerships, public authorities, and corporations; or it may be executed pursuant either to a court order, or to special statutory provisions, by a sheriff or commissioner without the consent of the owner. Deeds commonly encountered are general warranty deeds, special warranty deeds, and quitclaim deeds. General warranty deeds warrant the title conveyed against the claims of all persons. Special warranty deeds usually warrant that the grantor has done nothing to encumber the record title. Quitclaim deeds contain no warranties and merely purport to convey only such interests as the grantors may have in the premises.

8. Deed of Trust or Mortgage. A deed of trust or mortgage contains an express power of sale for the purpose of satisfying the obligation secured by the deed or mortgage.

9. Defects. Defects in title may be unrecorded deeds, forged deeds, deeds excuted pursuant to forged powers of attorney, deeds excuted in disregard to revoked powers of attorney, deeds of minor or incompetent persons, deeds by persons having no title but possessing the same name as the owner, deeds by grantors described as single but in fact married, deeds delivered after the death of the grantor, claims by heirs whose rights have not been barred, dower and curtesy rights, and improper execution or acknowledgement, or an erroneous description.

10. Easement. An easement conveys ownership rights to the grantee to use land; or, restricts the manner in which the owner may develop or use the property; or both. The landowner can use the easement area for purposes that do not interfere with the easement holder's authorized use.

A conservation, scenic, or preservation easement is a right or privilege, usually acquired by a public authority, to use, regulate, or control private property affecting National Forest land. Its purpose is to protect the scenic and natural qualities of a special, designated area and generally does not affect existing private uses exercised before the scenic easement.

Easements are classified as affirmative; negative; appurtenant; or easements in gross.

a. Affirmative Easement. An affirmative easement, sometimes called a positive easement, is a limited right to make use of land owned by someone else, such as easements for access and utility rights-of-way, fishing, and water flowage.

b. Negative Easement. A negative easement restricts the land to specific uses, such as limiting development, timber harvesting, and advertisements.

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c. Appurtenant Easement. An appurtenant easement connects with, attaches to, or benefits specific lands owned by the grantee. Appurtenant easements may be affirmative or negative, and they are transferable.

d. Easement in Gross. Easements in gross are rights in another's property without adjacent landownership that do not directly serve or benefit other properties. Examples include easements obtained by the U.S. Fish and Wildlife Service to prevent draining, filling, or burning of wet-lands on properties outside national wildlife refuges where there are no Federal lands or designated Federal areas that will directly benefit from the easement. Easements in gross may be affirmative or negative; they may or may not be transferable.

e. Scenic Easement. A partial interest in land with either or both affirmative rights in the easement holder and negative restrictions on the landowner. Sometimes referred to as a "conservation easement." Usually, the purpose is to restrict certain development activities inconsistent with the preservation or protection of identified resources. Many statutes define a scenic easement for specific resources.

For example, Public Law 92-400, which establishes the Sawtooth National Recreation Area, defines a scenic easement as, "The right to control the use of land in order to protect the esthetic values for the purposes of this Act, but shall not preclude the continuation of any use exercised by the owner as of the date of this Act." (86 Stat. 612).

Another example is section 16(c) of the Wild and Scenic Rivers Act which defines a scenic easement as, ". . . the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic river system, for the purpose of protecting the natural qualities of a designated wild, scenic, or recreational river area, but such control shall not effect, without the owners's consent, any regular use exercised prior to the acquisition of the easement."

While the Sawtooth and Wild and Scenic Rivers Acts grandfather preexisting uses, that is not necessarily a requirement of scenic easements used elsewhere.

f. Reserved Interest Easement. This is a form of a scenic or conservation easement whereby the landowner's specific rights and uses in the land are specifically and affirmatively stated in the deed of conveyance, and all remaining interests are conveyed to the grantee. The advantage of utilizing reserved interest conveyances is that all rights in the property are deemed acquired by the grantee unless they are expressly and specifically reserved in the grantor.

11. Exceptions. Exceptions are specific tracts of land excluded in the conveyance document. They are not in the category of reservation or outstanding rights.

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12. Fee Simple Title. A fee simple title displays ownership rights inherent in real property unlimited in duration and disposition.

13. Fee Taking. Fee taking is the acquisition of ownership rights subject only to any rights or interests specifically excepted in the taking.

14. Inholding. Privately owned tracts within the National Forest System boundaries. In order to acquire with land and water conservation funds, inholding tracts must be primarily valuable for outdoor recreation purposes and must satisfy an identified public outdoor recreation need. Each proposed Land and Water Conservation Fund inholding purchase must have been approved by the Regional Forester or must have been identified and approved as part of the land management plan.

15. Life Estate. A life estate is the exclusive right to use and occupy a designated property for the life of the person creating the estate. Unlike a use and occupancy right, it is alienable or transferable to others during the owner's life.

16. Option. An option is a legally enforceable offer to buy or sell a specific property during a defined period of time, identifying the property to be sold, showing the price, and defining the terms and conditions governing the transaction.

17. Outstanding Rights. An outstanding right is a right or interest in property owned by a person other than the present landowner. The phrase "outstanding in third parties" is sometimes used in describing the title to a proposed conveyance to indicate that an outstanding interest in land is owned by someone in the chain of title other than the present landowner.

18. Partial Land Interest. Partial land interest is a term describing any interest or right in land that is less than fee. Examples of partial land interests include scenic easements, mineral rights, utility easements, and reserved interests such as life estates.

19. Patent or Grant. A patent or grant conveys public lands from the sovereign. Patents are usually recorded by the landowners in the county in which the lands are located. Patents or grants from States are generally recorded by a department of State government.

20. Purchase Unit. Purchase units are approved areas for purchase and exchange under the Weeks Law and related authorities. Purchase units were established to assist the National Forest Reservation Commission in reviewing areas qualifying for acquisition under the Weeks Law. The Secretary of Agriculture establishes purchase units. Acquisition under the Weeks Law and related act authorities must be within approved purchase units.

21. Reservation. A reservation is a clause in a deed or other instrument of conveyance by which the grantor creates and reserves some right, interest, or profit in

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the estate granted. Reservations may comprise (1) the use or removal of resource materials such as mineral, forage, timber, water; (2) easements for rights-of-way for roads, powerlines, railroads, fences, ditches; or (3) the right of use and occupancy for residential use, cultivation, flowage, or other uses.

22. Right. A right is a partial interest or contractual right--a legal claim to hold, use, enjoy, or to convey or donate it; for example, mineral or water rights.

23. Title Encumbrances. An encumbrance is any right or interest in land, held by someone other than the owner, that may or may not be consistent with the owner's use. Among other things, encumbrances may consist of mortgages, deeds of trust, agreements for support, life estates, leases, tax liens, outstanding mineral rights, reservations, restrictions, and rights of reverter.

24. Title Evidence. Evidence of title includes all of the facts and evidence required by the Office of the General Counsel and the Attorney General in determining the acceptability of land titles.

25. Title Insurance. Title insurance is an insurance policy that indemnifies the purchaser against failure of the landowner's title up to the maximum liability stipulated in the policy. The Office of the General Counsel must approve all title insurance companies for use by the Forest Service. The title insurance policy format must comply with that approved by the Attorney General and the American Land Title Association for insuring title conveyed to the United States.

26. Torrens Title Certificate. A Torrens title certificate is used only in States where, by law, real property title evidence may be registered under the Torrens system. The Torrens system is a registering of land similar to the registering of motor vehicles and is used only in Minnesota and North Carolina.

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