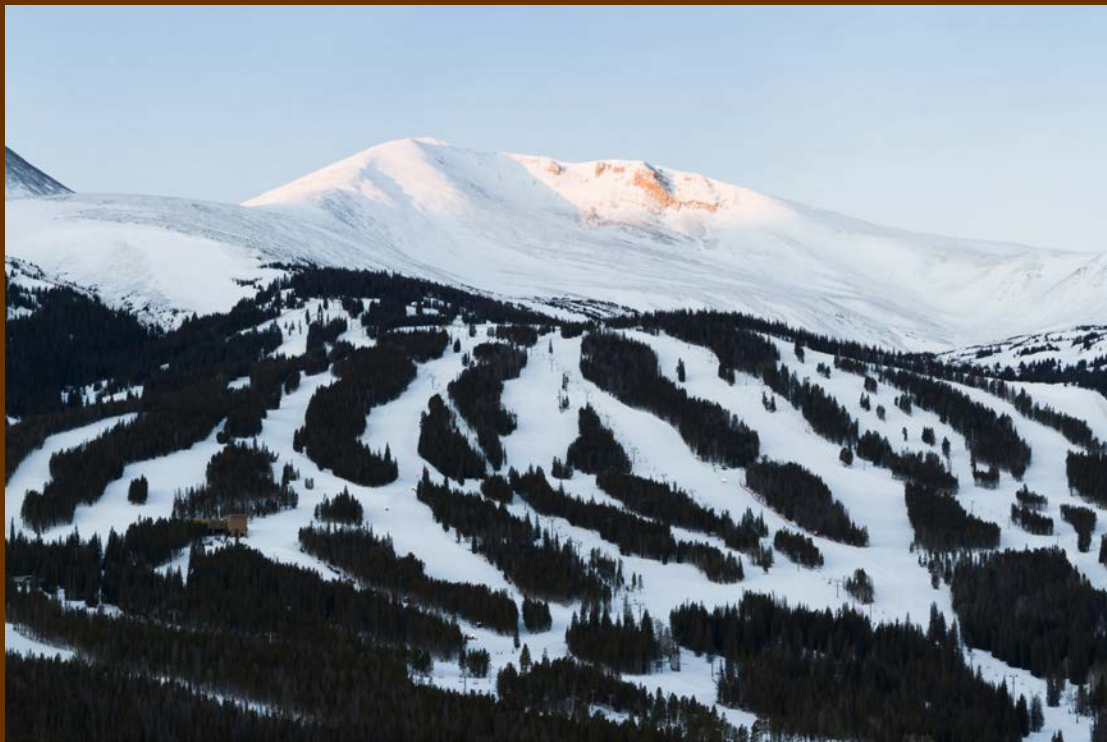




THE GARDEN LAW FIRM P.C.

**Selected Sections
of the Forest Service Manual and
Forest Service Handbook
Unique to
USFS Ski Area Special Use Permits**



Prepared by
The Garden Law Firm, PC

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**Selected Sections of the
Forest Service Manual and Forest Service Handbook
Unique to USFS Ski Area Special Use Permits**

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[]

2710.11a - Types of Authorizations Provided for by Statutory Authorities

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

The statutes that follow provide for the usual types of authorization documents indicated. See FSM 2701 for summaries of these authorities, and refer to FSH 2709.11, chapter 10, section 19, exhibit 03 for a guide to the types of uses, authorization documents, and terms authorized by these laws.

[]

- 16. National Forest Ski Area Permit Act of 1986, (16 U.S.C. 497b). Permits.

[]

2340.5 – Definitions *[relevant terms unique to ski areas]*

[]

Terrain Park. An area with artificial features such as jumps, rails, boxes, quarter- and half-pipes, and other obstacles that is used by freestyle skiers and snowboarders in the snow season and by bicycles in non-snow season.

AUTHORITY (FSM 2701) (January 10, 2011)

- 2701.1 Current Statutory Authorities
- 2701.2 Repealed Statutory Authorities That Remain Applicable
- 2701.3 Regulations

2701.1 - Current Statutory Authorities

The following statutory authorities govern the issuance and administration of special use authorizations on National Forest System lands.

[]

20. National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497(b)). This Act authorizes use for up to 40 years at an acreage size deemed appropriate by the authorized officer for nordic and alpine ski areas and facilities.

21. Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 497(c)).
Section 701 of this Act:

- a. Establishes a system to calculate fees for ski area permits issued under the National Forest Ski Area Permit Act of 1986, (16 U.S.C. 497(b));
- b. Provides for holders of ski area permits issued under other authorities to elect this permit fee system (FSH 2709.11, sec. 38.03(a));
- c. Includes provisions concerning compliance with the National Environmental Policy Act when issuing permits for existing ski areas (FSM 2721.61(f) and FSH 2709.11, sec. 41.61(b)); and

[]

PLANNING FOR PRIVATE SECTOR USES (FSM 2341) (April 17, 2014)

[]

2341.5 - PERMITTEE EMPLOYEE HOUSING

Some special recreation uses, such as ski areas and year-round resorts, may require on-site housing for the Permittee and/or employees of the Permittee to adequately protect property and provide for public safety. The Authorized Officer shall carefully evaluate the need and justification for Permittee housing within a permit area and make the determination in compliance with the appropriate environmental analysis and documentation requirements set forth in FSM 1950 and FSH 1909.15.

The Authorized Officer may approve Permittee housing within a permit area if the following conditions are met:

1. Provision of Permittee housing is consistent with the management direction and guidelines of the Forest land and resource management plan for the area.
2. There is a clear and convincing need for 24-hour, on-site property protection, round-the-clock public safety, and/or intermittent emergency service at other than normal operating hours, and the commuting time between the permit area and the nearest private property available for permittee housing exceeds one hour.

Ownership of Permittee housing for the holder of the permit or employees of the holder must be vested in the holder.

SPECIAL USES (FSM 2720) (October 1, 2018)

2720.1 Authority

2720.1 - Authority

For further direction on authorities, see FSM 2701.

[]

5. Cite the National Ski Area Permit Act of 1986 (16 U.S.C. 497b) as the exclusive authority to approve nordic and alpine ski areas except as provided for in FSM 2721.61e.

RECREATION SPECIAL USES (FSM 2721) (October 1, 2018)

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2721.39 Tramway (Aerial Tram, Ropeway, or Funicular)

2721.4 Concessions Involving Government-Owned Improvements

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2721.39 - Tramway (Aerial Tram, Ropeway, or Funicular)

This designation includes tramways, ropeways, or funiculars operated for recreation purposes, provided however that it does not include tramways, ski lifts, or tows at winter recreation sites which should be coded as 161 or 162 (FSM 2721.6). Tramways operated for other than recreation purposes should be coded as 771 (FSM 2727.7).

[]

2721.6 - Winter Recreation

Winter recreation refers to all facilities, activities, and services related to a winter recreation operation. Developments may include a complete resort facility, portions or all of slopes or lifts for a facility located partially on private land, and snow-play (FSM 2721.65). Ski activities such as ski schools are also included.

2721.61 - Winter Recreation Resort

This designation includes resorts associated with various forms of winter outdoor recreation, though they often may be used for summer recreation purposes also. Make provision in the permit, as needed, to allow all-season uses. See FSH 2709.11 for general instructions on the prospectus, application for permit, permit preparation, permit issuance, and permit administration.

Review by the regional forester is required prior to issuance of a permit where the capital investment to be authorized exceeds or is expected to exceed \$1 million for winter sports resorts.

2721.61a - Permit Conditions

Normally, authorize the more costly elements of the development, such as base lodge and related buildings and uphill equipment, under a term permit. Authorize by an annual special use permit ski trails and other land disturbances, for which the permittee should not be reimbursed in the event the permit is terminated prior to its expiration date. Ensure that all of the area necessary for the operation is covered by permit.

2721.61b - Permit Fees

Calculate fees for winter recreation permits under the ski area permit fee system established by 16 U.S.C. 497c (FSH 2709.11, sec. 38) or under the graduated rate fee system (GRFS) (FSM 2715.11) as follows:

1. Permit Fee System for Ski Areas Authorized Under National Forest Ski Area Permit Act of 1986. For ski areas authorized under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b), calculate permit fees under the permit fee system established by 16 U.S.C. 497c and set out in FSH 2709.11, section 38.
2. Permit Fee System for Ski Areas Authorized Under Organic Act of 1897 and Term Permit Act of 1915. For ski areas authorized under the Organic Act of 1897 (16 U.S.C. 551) or the Term Permit Act of 1915 (16 U.S.C. 497), provide holders the opportunity to elect the fee system in 16 U.S.C. 497c (FSH 2709.11, sec. 38). Do not require conversion of such authorizations to a permit issued under the National Forest Ski Area Permit Act of 1986.

If the holder does not elect to have permit fees calculated under the ski area permit fee system in 16 U.S.C. 497c, continue to calculate fees according to the method specified in the holder's permit (FSM 2715.11).

For nordic areas where primarily outfitting and guiding activities are conducted, continue to apply the permit fee system specified in the existing permit. Refer to FSM 2721.61e, paragraph 4, for direction on the characteristics of a nordic operation eligible for authorization under the National Forest Ski Area Permit Act of 1986 and for applicability of the permit fee system to such areas, as set out in FSH 2709.11, section 38.

3. Permit Fee System for Operations That Include Incidental Ski Activities or Facilities. For resorts that are primarily summer seasonal in nature and may include minor ski

operations (such as a simple lift or minor nordic operations), continue to apply the permit fee system specified in the existing permit.

For activities that are authorized under the National Forest Ski Area Permit Act of 1986 but include only incidental ski operations, apply the permit fee system in 6 U.S.C. 497c (FSH 2709.11, sec. 38). Encourage authorization of those activities under a more appropriate authority listed in FSM 2701, with the appropriate fee system.

4. Permit Fee System for Ski Lifts and Tows. Use the following permit fee systems for ski lifts and tows:

- a. If the use is authorized under the Term Permit Act of 1915 or the Organic Act of 1897, calculate permit fees for ski lifts and tows using a negotiated fair market value flat rate (FSH 2709.11, sec. 52) or the graduated rate fee system (FSM 2715.11).
- b. If the use is authorized under the National Forest Ski Area Permit Act of 1986, apply the permit fee system established by 16 U.S.C. 497c (FSH 2709.11, sec. 38). Encourage authorization of ski lifts and tows under a more appropriate authority listed in FSM 2701, with the appropriate fee system. Refer to FSM 2721.62 for management direction regarding ski lifts and tows.

2721.61c - Winter Recreation Site Operation Plan

Require an operation plan (FSM 2343.12) for each permit covering winter recreation activities.

2721.61d - Permittee Inspection

Include in permits for winter recreation sites requirements that permittees provide for public safety as outlined in FSM 2343.1, FSM 7320, and American National Standards Institutes (ANSI) B77 Standard.

2721.61e - Ski Area Permit

1. The National Forest Ski Area Permit Act (16 U.S.C. 497b) is the exclusive authority for authorizing primarily or entirely privately owned Nordic and alpine ski areas on National Forest System (NFS) lands. Assign use code 161, and use only the National Forest Ski Area Permit Act and form FS-2700-5b, Ski Area Term Special Use Permit, to authorize alpine ski areas and Nordic trail systems that have substantial capital improvements on NFS lands. Authorize ski areas operating entirely or primarily with federally owned facilities under Section 7 of the Granger-Thye Act (16 U.S.C. 580d). See 36 CFR 251.51 for a definition of "ski area."
2. The following uses do not constitute ski areas and therefore should be assigned a different use code and authorized under an authority other than the National Forest Ski

Area Permit Act, using a permit form other than FS-2700-5b, Ski Area Term Special Use Permit:

a. Nordic skiing that:

- (1) Is independent of an alpine ski resort;
- (2) Is not conducted from a Nordic center located on NFS lands;
- (3) Involves only grooming and temporary signing of federally owned trails; and
- (4) Involves no privately owned improvements on NFS lands.

Assign use code 163, ski slope or ski trail, to these activities, and authorize them under section 803(h) of the Federal Lands Recreation Enhancement Act (REA) (16 U.S.C. 6802(h)) or the Organic Act (16 U.S.C. 551) using form FS-2700-4, generally with a term of up to 5 years.

b. Nordic and alpine skiing operations with only minor improvements on NFS lands, such as where:

- (1) Use of NFS lands for Nordic skiing is limited to a partial trail system that extends less than 10 miles or that involves less than \$1,000,000 in privately owned improvements and that is incidental to facilities on private land; or
- (2) Use of NFS lands for Nordic or alpine skiing consists of minor portions of undeveloped terrain or a few cleared ski trails with no snow-making facilities, ski lifts, or other infrastructure.

Assign use code 163, ski slope or ski trail, to these activities, and authorize them under section 803(h) of REA or the Organic Act using form FS-2700-4, generally with a term of up to 10 years.

c. Nordic skiing that primarily involves outfitting and guiding (see 36 CFR 251.51 for definitions of “outfitting” and “guiding”), such as heliskiing or guided ski tours without groomed trails or support facilities. Assign use code 153, outfitter and guide service, to these uses, and authorize them under section 803(h) of REA using form FS-2700-4i or FS-2700-3f, as appropriate.

3. Consult with the Washington Office Director of the Recreation, Heritage, and Volunteer Resources staff before authorizing a term of more than 5 years for a federally owned Nordic trail system that does not constitute a ski area under FSM 2721.61e, paragraph 2a.

4. Assign a use code of 133, resort, to activities that are essentially summer season operations, such as those that involve a simple lift or minimal Nordic skiing, and authorize them under the Term Permit Act of 1915 (16 U.S.C. 497).
5. Winter and year-round recreational activities and services provided by the holder within the ski area permit boundary should be authorized under the ski area permit. In general, do not issue separate permits for non-skiing recreational activities that occur solely within the permit area, such as recreation events or outfitting and guiding.
6. With the exception of condominiums, normally all ski area facilities owned or under the control of the holder should be included in the ski area permit boundary. To the extent they exist on NFS lands, condominiums should be authorized under a separate term permit issued under the Term Permit Act.

2721.61f - Environmental Compliance

Ensure that issuance of permits for winter recreation resorts complies with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA), as well as the Forest Service's NEPA regulations and directives (36 CFR Part 220; FSH 1909.15). See FSH 1909.15 for direction on requirements related to permit issuance for new ski areas that are not currently authorized under a permit. See FSH 1909.15 and 2709.14, section 61.2, for direction on requirements related to permit issuance for ski areas that are currently authorized under a permit.

2721.62 - Ski Lift or Tow

This use code covers situations where a ski lift or tow constitutes the most significant development on NFS lands. A ski lift or tow may be assigned this use code if:

1. The base facility is located on adjacent private land;
2. A ski lift or tow connects a ski area with a private facility, such as a lodge, that is neither owned nor operated by the ski area permit holder; or
3. A community ski area does not provide any of the typical resort services, such as eating or sleeping facilities.

See FSM 2343.1 for direction relating to administration of permits for ski lifts and tows.

See FSM 2721.61b, paragraph 4, for direction on which land use fee system to use for ski lifts and tows.

2721.63 - Ski Slope or Ski Trail

This use code is appropriate where ski slopes and ski trails constitute the primary development on and use of NFS lands.

For alpine skiing, this use code generally involves use of NFS lands for downhill skiing without lifts on groomed or ungroomed trails. This use code should be used in those situations where the majority of a large ski area operates on adjacent private land and the capital investment on NFS lands is limited to a few ski trails with or without seasonal grooming. See FSM 2721.61e, para. 2b. More substantial developments on NFS lands should be authorized per FSM 2721.61e, paragraph 1.

For Nordic skiing, this use code involves trail grooming across NFS lands, with privately owned improvements on NFS lands limited to a partial trail system that extends less than 10 miles or that has a value of less than \$1,000,000 and that is incidental to facilities on private land.

Normally, authorize this type of use on form FS-2700-4 for a term of up to 5 years for government-developed trails and up to 10 years for privately developed trails. See FSM 2343.1 for direction on administration of permits for ski slopes and ski trails.

Calculate land use fees for ski slopes and ski trails based on land value or, where mixed landownership is involved, based on the proportion of total revenue attributable to their use (FSH 2709.11, ch. 30). The minimum land use fee for this type of use is \$150.

2721.64 - Ski Activity

This designation covers continuing minor ski activities, such as ski schools. Do not permit these activities as separate operations. Where there are existing permits, terminate them at the earliest opportunity and authorize future operation under a basic permit.

Temporary, short-time ski events, such as races, are designated recreation events. See FSM 2721.81 for direction on these events.

Calculate fees for ski activities under the graduated rate fee system, subject to a minimum fee of \$30 per year (FSM 2715).

2721.65 - Snow Play

This designation covers activities and facilities for winter recreation, not associated directly with skiing. Examples are tobogganing, sledding, and ice skating. Allow uphill devices provided they are not in place to assist skiers. Use one of the other designations under FSM 2721.6 when skiers are served.

Calculate fees for snow play under the graduated rate fee system (FSM 2715).

[]

CONCESSION USES INVOLVING PRIVATELY DEVELOPED FACILITIES (FSM 2343) (April 17, 2014)

[]

2343.02	Objective
2343.03	Policy
2343.1	Ski Areas
2343.11	Policy
2343.12	Avalanche Control
2343.13	Operating Plans
2343.14	Additional Seasonal and Year-Round Recreation at Ski Areas

[]

2343.02 - Objective

To provide diverse, natural resource-based recreation opportunities.

2343.03 - Policy

Manage concession sites, activities, and programs according to the policies in section 2340.3, the following policies, and the specific direction for each category of use.

[]

4. Encourage year-round, natural resource-based recreation activities at privately developed concession sites. Some facilities may be allowed as part of a resort development that would not be authorized as stand-alone developments. For example, allow installation of zip lines and other aerial adventure course facilities only under term permits for ski areas, resorts, and organizational camps, but not as stand-alone developments or under service permits. Refer to FSM 2343.14 and 7330 for guidance related to year-round natural resource-based recreation activities and associated facilities.

[]

11. Advertising. Except as provided in paragraphs 11 and 12, prohibit advertising at concession sites. Any exterior signage at a concession site must have prior written approval from the Authorized Officer as part of the operating plan. The Forest Service shield and any other symbol identified with the Agency shall not appear in conjunction

with product or service names and advertisements, and care must be taken to avoid any other appearance of Agency endorsement of products or services. Prohibited advertising includes naming of facilities in ways designed to promote the products or services of a company other than the permit holder. Placement of product or service names or advertisements on Government vehicles is always prohibited. The Forest Service has no authority to regulate any form of advertising conducted strictly on non-National Forest System lands.

Advertising and displays that do not comply with paragraphs 11 and 12 must be removed or modified to comply. Those that involve a contract with a third party may remain in place through the term of the current contract, but may not be renewed or extended.

a. Indoor Spaces. Advertising may be allowed inside buildings and other closed interior spaces owned by the holder, including the interior of tramway or gondola cabins, buses, and other vehicles. Interior spaces do not include ski lift towers, chairs, restraining bars, or other exterior ski lift components. Advertising may not be placed in a manner that allows it to be visible from outdoors, such as in building windows. Advertising in indoor spaces may promote the products or business of either the holder or other individuals and entities.

b. Chairlift Restraining Bars. Advertising may be allowed on chairlift restraining bars facing passengers:

(1) Only when it is included in a trail map display; and

(2) Only to the extent the advertising does not exceed 33 percent of the surface area of the panel facing passengers.

[]

c. Holder Services. Holders may post signs and other information at suitable outdoor locations in the permit area that notify visitors of the location of services offered at the concession site, such as rental shops and restaurants, provided that outdoor postings:

(1) Are limited to services provided by the holder;

(2) Identify only the name and location of services provided at the concession site; and

(3) Do not include the name of other companies or product descriptions, trademarks, taglines, promotional graphics, or any other advertising for those companies.

- d. Holder Name and Logo. Holders may post signs at suitable outdoor locations in the permit area that display the holder's name and logo. Holders, their contractors, other service providers, and business partners may display their name and logo on personal and company vehicles operated on roads and in parking areas within the permit area. Except as provided in paragraph f, no other name, logo, or other advertising is permitted on signs and vehicles operated in the permit area.
- e. Printed Materials and Other Off-Site Media. Printed materials and other media produced outside the permit area, such as trail map brochures, that contain advertising may be distributed at concession sites, but may not be posted in outdoor settings in the permit area, unless they are advertising strictly holder services. These materials and other media must state that the ski area is located in a National Forest.
- f. Short-Term Competitive or Recreation Events. Authorized officers may approve outdoor advertising posted for periods of 21 days or less for competitive or recreation events such as ski and snowboard races. Advertising materials may be placed only at the event site and must be removed as soon as practicable after the event. Companies associated with the event may display their name and logo on personal and company vehicles operated in the permit area during the period outdoor advertising is approved for the event.
- g. Designated Ski and Snowboard Race Courses and Terrain Parks. Entities such as the National Standard Race Program that provide financial or in-kind support for snow sport race courses and terrain parks with clearly defined start and finish points may be recognized at the start and finish points of the courses and parks and on race gates throughout the winter operating season. Advertising shall not be posted elsewhere at these sites. Snow sport race courses and terrain parks must be identified in a master development plan or an operating plan approved by the authorized officer.
- h. Manufacturer's Name. The manufacturer's name may be displayed in a product, such as a ski lift, in the permit area, provided that the manufacturer's name is embedded in the product as part of the manufacturing process. The manufacturer's name may not be posted on products in outdoor spaces in the permit area.
12. Sponsorships. Sponsorships at concession sites should support events, projects, and programs that promote public participation in or awareness of management of National Forest System lands, such as events, projects, or programs that evaluate solutions to specific natural resource management problems, increase conservation awareness, or promote public health or safety. Use sponsorships to promote conservation education and outdoor environmental program objectives (FSM 1623.02 and 1624.02). Sponsorships may not be used to defray the cost of facilities and services authorized by a permit or to provide facilities or activities to respond to evolving

customer preferences. Trail map bulletin boards, directional signing, and similar outdoor posted information are basic elements of a holder's operations and are not appropriate for sponsorship recognition.

Sponsored events, projects, and programs must have prior written approval from the Authorized Officer and must include a plan that describes the event, project, or program; its duration, objective, outcome, and target audience; and communication or marketing strategies for the event, project, or program. Exhibit 01 is an example of a sponsorship plan.

13. Clearly define the holders' responsibilities for the safety of their employees and the public within the boundaries of the authorization and while participating in activities covered by the authorization. Require that safety be addressed in applications responding to prospectus offerings, special use authorizations, and operating plans.

14. Ensure that literature, brochures, and other advertising that permit holders distribute, with respect to a concession enterprise, do not contain misleading statements or indicate that discrimination is practiced against any prospective patron because of race, color, sex, national origin, age or disability. Also ensure that such literature identifies the facility as being authorized on National Forest System land.

2343.03 - Exhibit 01

**SPONSORSHIP PLAN FOR AN AVALANCHE BEACON
TRAINING AREA AT XYZ SKI AREA**

Background

XYZ Ski Area proposes installation of an avalanche beacon and backcountry safety training area on National Forest System lands. Backcountry areas adjacent to the ski area offer extensive opportunities for skiing and snowboarding, but avalanches are a serious concern on these slopes. To prepare those who leave ski area boundaries and travel in the backcountry, two companies—Backcountry Access™ and Tracker DTS™ - have agreed to lend financial support to the ski area to construct an avalanche beacon and backcountry safety training area.

Description of Sponsorship

The sponsorship would enable installation of a 0.5-acre training area near the base terminal of the main chairlift and parking lot. This location would allow both skiers at the mountain and those using the backcountry by other means to test their avalanche transceiver equipment and their skills in a managed course, which would have five permanently buried beacons. In addition, interpretive displays and several signs containing avalanche awareness and safe winter travel information would be installed at the site. The support provided by the two companies would be recognized by including their name and trademark on the signs and in the displays and free brochure that would be available at the course.

Duration

The interpretive displays and accompanying sponsorship signage would be posted at the ski area for at least 5 years.

Objectives

Consistent with FSM 2343.03, paragraph 12, the purpose of this sponsorship is to promote public health and safety by offering winter backcountry users an opportunity to test their avalanche rescue skills and equipment in a controlled situation and in a place where other safety information would be made available.

Outcome

The anticipated outcome of this sponsorship would be that skiers and snowboarders using the backcountry would be more aware of and better prepared to address avalanche hazards.

Target Audience

The target audience is winter backcountry users, including those using XYZ Ski Area and those who drive to other locations in the area.

Communication and Marketing Strategies

Backcountry Access™ and Tracker DTS™ would be identified as sponsors on information displays in the beacon training area and in the brochure that would be available at the site. The recognition would be limited to acknowledgment of the sponsors' public service initiative and their names and trademarks. No reference to the companies' products or services or other promotional material would be included in the recognition.

Recognition of the sponsors may be posted at no larger than pedestrian scale and should be consistent with the principles of the Forest Service Built Environment Image Guide. The Forest Service shield and any other symbol identified with the Agency shall not appear in conjunction with product or service names and advertisements, and care must be taken to avoid any appearance of Agency endorsement of the sponsor or their products or services. Recognition of sponsors is also subject to the following limitations:

- a. Duration and Location of Recognition. Sponsor recognition may be allowed only during and within the proximity of the event, project, or program. To the extent practicable, recognition must be integrated into the event, project, or program so that participants and spectators can make a clear connection between the sponsor and the public service being provided.
- b. Scope of the Recognition. Sponsor recognition in signs, printed and electronic media, wayside and kiosk exhibits, and temporary facilities must be limited to acknowledgment of the sponsor's public service initiative and may include only the sponsor's name and trademark. Taglines and other promotional materials may not be posted. The purpose of recognition is to identify the sponsor, not to promote the sponsor's products or services.
- c. Events. Recognition of sponsors of events that are conducted by the holder, such as festivals, clean-up days, and volunteer programs, may appear on banners, posters, flyers, and temporary facilities and may include sponsors' name and trademark. This type of recognition may be placed only at the event site and must be removed as soon as practicable after the event.

2343.1 - Ski Areas

This category includes sites provided and developed on National Forest System lands under a special use permit and authorized as a ski area (36 CFR 251.51) to accommodate alpine and Nordic skiing, other snow sports, and additional seasonal and year-round natural resource-

based recreation activities. For additional direction pertaining to winter recreation uses, see FSM 2703, 2710, and 2721.61, Special Uses Management; FSH 2709.11, chapter 10, Application and Authorization Processing; FSH 2709.14, chapter 60, Winter Recreation Resorts and other Concessions Involving Winter Sports; FSM 7320, Tramways, Funiculars, Ski Lifts, Conveyors, and Tows; and FSM 7330, Aerial Adventure Courses. Manage winter recreation sites through application of direction and guidance in FSM 2343.11 through 2343.14.

2343.11 - Policy

1. Work with holders to ensure that ski areas provide a high-quality recreation experience and that recreation activities at ski areas are conducted in a manner that protects the natural environment and cultural resources and enhances community values.
2. Ensure that the primary recreation purpose of ski areas is skiing and other snow sports (36 CFR 251.51). Do not authorize new ski areas if the primary purpose will be other than snow sports. Any expansion of a ski area permit boundary must be based solely on needs related to snow sports. Do not approve additional seasonal or year-round natural resource-based recreation activities and associated facilities at ski areas if they would change the primary purpose of the ski area to other than snow sports.
3. Encourage additional seasonal or year-round recreation opportunities that connect visitors to the natural environment that may range from active to passive recreation, natural and cultural resource interpretation and conservation education supporting the Forest Service's mission to sustain the health, diversity, and productivity of the National Forests and Grasslands to meet the needs of present and future generations.
4. Allow holders to charge fees for the use of improvements and services in which they have made capital investments, such as skiing trails or other facilities they constructed, groom, or otherwise maintain. Do not allow holders to charge for the use of National Forest System lands in which they have made limited or no investments. Holders may not charge for use of non-motorized or motorized trails that are constructed and maintained by the Forest Service.
5. Do not allow a holder to charge an entrance fee. Allow permit holders to charge a fee for the facilities and services they offer, such as lifts, plowed parking lots, groomed slopes and trails, and manmade snow. Authorized Officers should strive to ensure that, to the extent possible based on public safety considerations, some portions of the permit area remain open to the public without charge, so that the holder's charges do not constitute de facto entrance fees.
6. Ensure that holder operations comply with Forest Service regulations (36 CFR 251.55(b)) and permit terms and conditions for non-exclusive use and that the ski area remains open to the non-paying public for all lawful uses that are not inconsistent with

the holder's rights and privileges and public safety. Document in the operating plan authorized restrictions on use by the non-paying public, and require the holder to post these restrictions in locations where they would be effective in informing the public, for example, on the ski area's website and on site at a primary entrance or public information facility. In most cases, it would not be appropriate for restrictions to preclude all public use during the ski season other than by those purchasing a lift ticket or paying for other services.

7. Encourage private ownership of Nordic skiing operations that involve substantial improvements on National Forest System lands. See FSM 2721.61e for direction on authorizing Nordic skiing in various situations.

8. Plan for the development of buildings such as day lodges, restaurants, and other occupied structures so they are not exposed to frequent and extensive or severe avalanche activity.

9. Discourage development and use of new terrain that requires military weapons for avalanche control.

2343.12 - Avalanche Control

1. Authorize control of avalanche areas under a special use authorization. Issue a separate special use authorization for avalanche control when the affected area is located outside the ski area permit boundary. Avalanche control should be addressed in ski area operating plans, and detailed plans for snow safety should be developed and retained at ski areas and should be available for Forest Service review upon request.

2. Except as provided in paragraph 3 of this section, require holders to do all avalanche control work at ski areas.

3. Consistent with the current Master Interagency Agreement (#11IA11132430205) between the Forest Service and the Assistant Secretary of the Army (Acquisition, Logistics and Technology) for the Forest Service's national Avalanche Control Program (ACP), maintain the security of weapons and ammunition assigned to the Forest Service for the ACP, and ensure that all ACP personnel have received training for their respective duties using protocols established by the American Artillery Users of North America Committee (AAUNAC). Consistent with the requirements of U.S. Army regulations (AR 700-131, ch. 8) and the National Firearms Act (26 U.S.C. 5841), provide a level of oversight and supervision of the program that assures weapons and ammunition are in Forest Service possession and control.

4. In consultation with the Department of the Army and AAUNAC, the Deputy Chief for the National Forest System is responsible for determining whether permit holders may participate in the ACP. The Director of the Forest Service National Avalanche Center is

responsible for coordination of the ACP nationally. The Authorized Officer is responsible for assuring compliance with the requirements of paragraphs 1 through 3 of this section at individual ski areas.

5. Forest Service participation in the ACP at ski areas is authorized under Section 5 of the Granger-Thye Act (16 U.S.C. 572). Require collection agreements (FSM 1584) to cover all costs incurred by the Forest Service in connection with participation in the ACP at ski areas.

2343.13 - Operating Plans

1. Operating plans must specify the holder's duties and assign responsibility for public safety to the holder (FSM 2341.4). When non-winter operations are extensive, consider also requiring a summer operating plan.
2. Before approving an operating plan, require documentation that the holder can provide sufficient personnel, equipment, and facilities for rescue, first aid, and transportation of injured persons.
3. Ensure that ski area operating plans require the holder to patrol slopes, ski trails, and other areas to identify and mitigate hazards.

2343.14 - Additional Seasonal and Year-Round Recreation at Ski Areas

1. Apply the following additional criteria in initial screening of proposals for additional seasonal or year-round recreation activities and associated facilities (36 CFR 251.54(e)(1) and FSH 2709.11, sec. 12.2). These activities and associated facilities must:
 - a. Not change the primary purpose of the ski area to other than snow sports;
 - b. Encourage outdoor recreation and enjoyment of nature and provide natural resource-based recreation opportunities;
 - c. To the extent practicable, be located within the portions of the ski area that are developed or that will be developed pursuant to the master development plan;
 - d. Not exceed the level of development for snow sports and be consistent with the zoning established in the applicable master development plan;
 - e. To the extent practicable, harmonize with the natural environment of the site where they would be located by:
 - (1) Being visually consistent with or subordinate to the ski area's existing facilities, vegetation and landscape and

- (2) Not requiring significant modifications to topography to facilitate construction or operations;
 - f. Not compromise snow sports operations or functions; and
 - g. Increase utilization of snow sports facilities and not require extensive new support facilities, such as parking lots, restaurants, and lifts.
2. Additional seasonal or year-round recreation activities and associated facilities that may meet the criteria in FSM 2343.14, paragraph 1, include but are not limited to:
- a. Zip lines;
 - b. Mountain bike terrain parks and trails;
 - c. Disc golf courses; and
 - d. Ropes courses.
3. Additional seasonal or year-round recreation activities and associated facilities that may not be authorized include but are not limited to:
- a. Tennis courts;
 - b. Water slides and water parks;
 - c. Swimming pools;
 - d. Golf courses; and
 - e. Amusement parks.
4. Factors that may affect whether other additional seasonal or year-round recreation activities and associated facilities besides those listed in paragraph 2 may be approved under paragraph 1 of this section include but are not limited to the degree to which visitors are able to engage with the natural setting, the extent to which the activities and facilities could be expected to lead to exploration and enjoyment of other NFS lands, and the similarity of the activities and associated facilities to those enumerated in paragraph 2 or paragraph 3 of this section.
5. Do not approve additional seasonal or year-round recreation activities and associated facilities when the visitor's experience is not interdependent with attributes common in National Forest settings.
6. Allow temporary activities that rely on existing facilities, such as concerts or weddings, even if they are not necessarily interdependent with a National Forest

setting, provided they are enhanced by it. Do not authorize new permanent facilities solely for these activities.

7. Encourage holders to utilize existing facilities to provide additional seasonal or year-round recreation activities.

8. Use ski area master development plans to guide the placement and design of additional seasonal or year-round recreation facilities. As part of the master development planning process, follow these steps in this sequence:

- a. Establish zones to guide placement and design of additional seasonal or year-round recreation facilities, basing the zones on the existing natural setting and level of development to support snow sports;
- b. Depict the general location of the facilities; and
- c. Establish an estimated timeframe for their construction.

9. Utilize the Scenery Management System (FSM 2380), Built Environment Image Guide (Publication FS-710), and the Recreation Opportunity Spectrum (FSM 2310) to ensure that additional seasonal or year-round recreation activities and associated facilities are located and constructed to harmonize with the surrounding natural environment.

10. Authorization of additional seasonal or year-round recreation activities and associated facilities is subject to terms and conditions deemed appropriate by the Authorized Officer.

11. The acreage necessary for additional seasonal or year-round recreation activities and associated facilities may not be considered in determining the acreage encompassed by a ski area permit. Permit area expansions must be based on needs related to snow sports rather than additional seasonal or year-round recreation.

12. Additional seasonal or year-round recreation activities and associated facilities that were authorized before November 7, 2011, and that do not meet the criteria in paragraphs 1 through 11 of this section may continue to be authorized during the term of the current permit. When that permit terminates or is revoked, do not reauthorize additional seasonal or year-round recreation activities and associated facilities that do not conform to paragraphs 1 through 11 of this section.

13. Notwithstanding FSM 2340.3, paragraph 3, and 2343.03, paragraph 1, a proposal that complies with paragraphs 1 through 12 of this section may be approved.

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61 WINTER RECREATION RESORTS (FSH 2709.14) (April 17, 2014)

- 61.1 Ski Area Permit
- 61.2 Environmental Analysis and Documentation
- 61.3 Operating Plan
- 61.4 Explosives Magazine Security
- 61.5 Ski Area Permit Fees [Reserved]

61.1 - Ski Area Permit

1. The provisions in this section are applicable to ski areas as defined at 36 CFR 251.51 and FSM 2721.61e. In establishing or revising the boundary for a ski area permit:

- a. Retain currently permitted land that is needed for expansion in the foreseeable future.
- b. Consider the objectives in the applicable land management plan that may be affected by how the boundary is drawn, including the land base identified for exchange and other long-term resource management activities.
- c. According to 36 CFR 251.55(d), exclude lands that:
 - (1) Will not be occupied by the facilities authorized;
 - (2) Are not necessary for constructing, operating, maintaining, and fully utilizing the authorized facilities and conducting the authorized activities; and
 - (3) Are not necessary to address concerns of public health and safety and to protect the environment.

2. Normally issue a ski area permit for a 40-year term, if upon consideration of information submitted by the applicant, the ski area development meets the following criteria (36 CFR 251.56(b)(2)(i)):

- a. Existing on-site development is sufficient to justify a 40-year term;
- b. Existing investment of capital is in ski-related facilities;
- c. Planned investment of capital is directly related to development of ski area facilities and is not for financing ongoing operation and maintenance costs;
- d. Ski area facilities requiring long-term investment are or will be located predominantly on land authorized under the permit;

- e. The number and magnitude of facilities shown in the master development plan require long-term financing or operation; and
 - f. The United States is not the owner of the principal facilities in the ski area.
3. Authorize a term of less than 40 years for a ski area permit when the applicant requests a shorter term or when (36 CFR 251.56(b)(2)(ii)):
- a. The ski area, whether existing or proposed, does not meet the criteria in section 61.1, paragraph 2, such as where:
 - (1) Total fixed assets for the ski area are worth less than \$1 million (the criterion in paragraph 2a is unmet);
 - (2) The holder has not made improvements in the ski area in the last 10 years and no capital improvements are planned in the next 10 years or the facilities are in need of renovation (the criterion in paragraph 2a is unmet); or
 - (3) Ownership of the ski area is in transition, such as when the ski area is in trust, in receivership, or listed for sale (the criterion in paragraph 2c is unmet).
 - b. Analysis of the information submitted by the applicant indicates that a shorter term is sufficient for financing the ski area; or
 - c. A 40-year term would be inconsistent with the applicable land management plan.
4. Initiate conversion of dual ski area permits issued under the Term Permit Act (16 U.S.C. 497) and the Organic Act (16 U.S.C. 551) using form FS-2700-5 and form FS-2700-4 (dual permits) to the new permit issued under the National Forest Ski Area Permit Act (16 U.S.C. 497b) using form FS-2700-5b (new permit) by writing to holders of dual permits, providing them with a blank copy of the new permit, and inviting them to meet with the Authorized Officer or Authorized Officer's Representative to discuss the new permit. Any holder who wishes to convert dual permits to the new permit shall submit a written request to the Authorized Officer.
5. Before conversion, require the holder to submit a master development plan or provide for the preparation of such a plan per clause I.D.1 of the new permit (FSH 2709.11, sec. 52.4). For a ski area with no foreseeable expansion, documentation of existing facilities may meet this requirement.
6. With the holder's consent, convert the holder's dual permits to the new permit if (36 CFR part 251, Subpart B, and 251.56(g)(3)):
- a. The holder is in compliance with the dual permits and any pending administrative appeals involving the dual permits have been resolved;

- b. All land use fees due under the dual permits are paid in full;
 - c. Any proposed modifications of terms and conditions in the dual permits meet the criteria in section 61.1, paragraph 2, and the applicable requirements of 36 CFR part 251, Subpart B; and
 - d. Other applicable requirements in 36 CFR part 251, Subpart B, are met.
7. Do not convert a holder's dual permits to the new permit if there is a pending bankruptcy or foreclosure action against the holder (criterion 6a or 6b and 36 CFR 251.59 are unmet).
8. Do not convert a holder's dual permits to the new permit if a sale of the holder's ski area is in progress (36 CFR 251.59 will not be met). Issue the new permit to the new owner if the new owner meets applicable requirements under 36 CFR 251.54.
9. Holders who consent to conversion do not automatically qualify for a 40-year term and must meet all the criteria in section 61.1, paragraph 2.
10. Holders of dual permits may choose to retain them until they expire (36 CFR 251.56(g)(4)). Dual permits may be amended, provided that their term may not be extended. Include current graduated rate fee system clauses in any amendment of dual permits that is not subject to conversion under paragraph 11. Before amending dual permits, encourage the holder to consent to issuance of the new permit per paragraph 7 to hasten elimination of the dual permit system. Upon expiration of dual permits, reauthorize the ski area using the new permit.
11. Major modifications of dual permits require conversion to the new permit, unless the holder provides compelling justification for retaining the dual permits (36 CFR 251.56(g)(4) and 251.61).
12. The acreage necessary for additional seasonal or year-round recreation activities and associated facilities may not be considered in determining the acreage encompassed by a ski area permit. Permit expansions must be based on needs related to snow sports rather than additional seasonal or year-round recreation.

61.2 - Environmental Analysis and Documentation

The direction in this section regarding compliance with the National Environmental Policy Act (NEPA) applies to existing ski areas that are under permit. See FSH 1909.15 for further direction. For new ski areas that are not under permit, refer to FSM 2721.61f.

1. Under the Omnibus Parks and Public Lands Management Act of 1996, section 701(i) (16 U.S.C. 497c(i)), issuance of a ski area permit which is purely administrative in nature does not constitute a major Federal action for the purposes of the National Environmental Policy Act (NEPA) and, therefore, does not require preparation of an environmental impact statement (EIS). Section 497c(i) applies to issuance of a ski area permit that involves only administrative actions, such as issuance of a permit when no changes to the Master Development Plan and no new facilities or activities are authorized to:
 - a. A new owner of the ski area improvements;
 - b. The existing owner upon expiration of the current permit; or
 - c. A holder of a permit issued under the Organic Act of 1897 or the Term Permit Act of 1915 converting to a permit under the National Forest Ski Area Permit Act of 1986.
2. Under most circumstances, ski area permit issuances for strictly ministerial changes covered by 16 U.S.C. 497c(i) may be categorically excluded from documentation in an environmental assessment (EA) or an environmental impact statement (EIS). Follow direction in FSH 1909.15, chapter 30.
3. If, under rare circumstances, a determination is made that the categorical exclusions in FSH 1909.15, chapter 30, do not apply to a proposed ski area permit issuance with strictly ministerial changes covered by 16 U.S.C. 497c(i), prepare an EA. Do not prepare either a finding of no significant impact (FONSI) or an EIS.
4. For issuance of a ski area permit that involves more than ministerial changes (such as authorizing a change in activities or ski area facilities) and is, therefore, not covered by the provisions of 16 U.S.C. 497c(i), follow the procedures in FSH 1909.15 for NEPA compliance.

61.3 - Operating Plan

It is the responsibility of the Authorized Officer to ensure that the holder of a winter recreation resort permit, in consultation with the Authorized Officer, prepare and annually revise an operating plan that covers all operations authorized by the permit (FSM 2343.13). The Authorized Officer shall approve the operating plan and annual revisions before they are

implemented. Once approved by the Authorized Officer, incorporate the operating plan and annual revisions as an appendix to the permit.

The operating plan for a winter recreation resort must, at a minimum, address the following operations:

1. Ski patrol and first aid.
2. Communications.
3. Signs.
4. General safety and sanitation.
5. Erosion control.
6. Accident reporting.
7. Avalanche control.
8. Search and rescue.
9. Boundary management.
10. Vegetation management.
11. Designation of representatives.
12. Trail routes for Nordic skiing.
13. Explosive Magazine Security (where applicable).

61.4 - Explosives Magazine Security

Except for military artillery ordinance, the purchase, storage, and handling of explosives by ski areas is regulated by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and some States. Military artillery that are used for avalanche control at ski areas are loaned to the Forest Service by the U.S. Army under provisions of U.S.C. 4055, and the procedures for procuring, storing, and handling military artillery ordinance are addressed in an Interagency Agreement with the U.S. Army. The Forest Service's role for other explosives used at ski areas is to provide oversight in assisting the ATF and State agencies in maintaining security for magazine facilities located on National Forest System (NFS) lands. To fulfill the Forest Service's role, the Authorized Officer shall ensure that the holders include the following provisions in the avalanche control section of the operating plan (sec. 61.3):

1. Policy. To the extent possible, consolidate and/or remove explosives magazine storage facilities associated with winter recreation resorts on National Forest System lands.
2. Responsibility. Additional responsibilities and direction related to blasting and explosives are in section 62 of FSH 6709.11 and FSM 6745.

It is the responsibility of the Authorized Officer to:

- a. Ensure that the Regional Blaster Coordinator and the Unit's Lead Blaster are kept informed of all aspects of the winter recreation resort's explosives program (FSM 6745).
 - b. Ensure that qualified agency personnel annually inspect winter recreation resort explosives magazines located on National Forest System (NFS) lands to verify that the condition of the magazine and its contents comply with the requirements in the current edition of the Guide for Using, Storing and Transporting Explosives and Blasting Materials, available from the Missoula Equipment Development Center or unit's lead blaster. The Forest Service's inspection may be waived if the holder notifies the Authorized Officer that an authorized State agency or the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) explosives inspection has taken place within that calendar year.
 - c. Facilitate, to the extent possible, the removal and/or consolidation of explosive magazine storage facilities on NFS lands.
3. Identification of Explosives Magazines. For each authorized explosives magazine located on NFS lands, list the following:
- a. Name and location.
 - b. Type (1-5).
 - c. Name and day and evening telephone numbers of an emergency contact.
 - d. Name and day and evening telephone numbers of a custodian.
 - e. Quantity and type of explosives generally stored.
 - f. Type of military weapon (where applicable).
 - g. Quantity and type of munitions generally stored (where applicable).
 - h. Special security features, such as alarm systems (where applicable).

Do not disclose information relating to the previous paragraphs a through h to the public through a Freedom of Information Act (FOIA) request or any other type of request. Refer any requests for such information to the Washington Office, Office of Regulatory and Management Services, National FOIA Coordinator. Maintain this information in a secure location that is separate from the permit file, both in the office administering the winter recreation resort permit and at the office of the Regional Blaster Coordinator. In addition, the Authorized Officer shall mail the information required by paragraphs a through h, and any updates, on a compact disc to the National Winter Sports Coordinator

for inclusion in the national database containing information on the storage of explosive materials on NFS lands. The national database shall be housed in the Washington Office Law Enforcement and Investigations office. It is the responsibility of the National Winter Sports Coordinator to keep this national database current.

4. Inspections. The operating plan must contain a provision requiring the holder to inspect, at least every 7 days, magazines used to store explosives (27 CFR 55.204). This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazine or unauthorized removal of the contents of the magazine. Surveillance devices, if approved by the ATF, may be used to meet this requirement. The operating plan must also specify that any loss or theft of explosive material be reported to the ATF, local authorities, and the Forest Service within 24 hours of discovery.

5. Inventories. The operating plan must contain provisions that ensure prompt detection of discrepancies between the physical inventory and the record inventory by requiring the holder to:

- a. Annually inventory explosives stored within the permit area (27 CFR 55.125).
- b. Keep a daily summary of magazine transactions for each magazine used to store explosive materials (27 CFR 55.127).
- c. Record, no later than the close of the next business day, the total quantity of explosives placed in and removed from each magazine during a 24-hour period, and the total amount of explosives remaining at the end of that period.

6. Magazine Key Control and Security. The operating plan must contain a provision requiring the holder to develop a policy for magazine key control and security. At a minimum, the policy should contain provisions governing distribution and control of keys issued to personnel authorized to enter magazines, such as provisions stating that:

- a. A key inventory must be kept listing all those who have been issued magazine keys.

- b. Magazine keys must be issued only to ski area personnel authorized to possess explosive materials.
 - c. Locks on magazines must be changed immediately if damaged or if keys are unaccounted for or stolen.
 - d. Use registered locks (locks with keys that cannot be duplicated) or change locks on magazines every year.
7. Background Investigations. The operating plan must contain a provision requiring the holder to request the ATF to conduct background checks on all employees authorized to possess explosives, as required by the Safe Explosives Act of 2002 and by the ATF permits issued under the act. Authorized employees may possess explosives until ATF informs the holder otherwise.
8. Disposal of Expired or Deteriorated Explosives. The operating plan must contain a provision requiring the holder to remove explosives from the magazine that have deteriorated to the extent that they are unstable or dangerous and to destroy them in accordance with the manufacturer's instructions (29 CFR 1910.109(c)(5)(v)).
9. Housekeeping. The operating plan must contain a provision requiring the holder to:
- a. Keep magazines clean, dry, and free of grit, paper, rubbish, and empty packages and containers.
 - b. Clear within 25 feet of the magazine all rubbish, brush, dry grass, and trees, except live trees more than 10 feet tall and living foliage that is used to stabilize the earthen covering of a magazine. This provision supersedes the permit clause prohibiting removal of vegetation without approval of the authorized officer.
 - c. Clear within 50 feet of the magazine all volatile materials, such as, paints, solvents, and so forth (27 CFR 55.215).
10. Signs. The operating plan must require the holder to post on the outside of a building in which Class I or Class II magazines are located a sign reading, "Explosives - Keep Off" (29 CFR 1910.109(c)(2)(iii)).

61.5 - Ski Area Permit Fees [Reserved]

62 **SKI LIFT, TOW [RESERVED]** (FSH 2709.14) (version issued April 17, 2014)

63 **SKI SLOPE, SKI TRAIL [RESERVED]** (FSH 2709.14) (version issued April 17, 2014)

64 **SKI ACTIVITY [RESERVED]** (FSH 2709.14) (version issued April 17, 2014)

65 **SNOW PLAY [RESERVED]** (FSH 2709.14) (version issued April 17, 2014)

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AUTHORIZATIONS (FSM 2711) (version issued April 17, 2014)

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2711.32 Ski Area Term Permit

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2711.32 - Ski Area Term Permit

For further direction on ski area term permits, see FSM 2721.61e.

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PREPARING SPECIAL USE AUTHORIZATIONS (FSM 2713) (version issued April 17, 2014)

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2713 - PREPARING SPECIAL USE AUTHORIZATIONS

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

2713.1 - Liability and Insurance

1. Inherent Risks.

- a. Engaging in most activities on National Forest System lands involves inherent risks. Swimming, boating, skiing, horseback riding, mountain climbing, and even hiking, camping, and picnicking involve inherent risks.
- b. All concessions authorized by the Forest Service, including resorts, ski areas, marinas, and outfitting and guiding that cater to the vacationing or traveling public, involve hazards to users in varying degrees.
- c. Individuals engaging in activities on National Forest System lands, regardless of whether they involve concessions, assume these risks. While concessionaires must provide a safe operation, safe equipment, and good supervision and meet other requirements relating to public safety, the public assumes inherent risks not related to these operating requirements, such as encountering dangerous weather or being injured by snakes or other wild animals.

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2713.1 - Exhibit 01

Minimum Coverage Amounts for Liability Insurance

MINIMUM COVERAGE AMOUNTS FOR LIABILITY INSURANCE			
FSM Cite	Type of Special Use	Minimum Coverage Amount (in thousands of dollars)	
2721.11	Boat Dock and Wharf	25/100/300	300
2721.12	Clubs	25/300/500	500
2721.13	Organization Camps	25/300/500	500
2721.14	Trail Shelters	25/100/300	300
2721.15	Private Camps	25/300/500	500
2721.22	Houseboats (insurance is required only for concessions)	25/300/300	300
2721.30	Lodging	25/300/500	500
2721.32	Hotel/Motel	25/300/500	500
2721.33	Resorts	25/300/500	500
2721.41	Camp and Picnic	25/100/300	300
2721.42	Caves and Caverns	25/100/300	300
2721.43	Golf Course	25/100/300	300
2721.44	Park and Playground	25/100/300	300
2721.46	Rifle and Target Ranges	25/100/300	300
2721.47	Trailer Courts or Camps	25/300/300	300
2721.48	Tramway	50/500/2000	2000
2721.49	Recreation Event	See 2721.53	
2721.52	Marina	50/500/500	500
2721.53	Outfitting and Guiding		
	Aerial Activities – 1 person	25/500/1000	1000
	– 2 or more people	25/500/2000	2000
	Backpacking	25/300/300	300
	Bicycling	25/500/500	500
	Bus, Van, Four-Wheel Drive Tours, ATV	25/500/500	500
	Hunting	25/500/500	500
	Nature Hikes	25/300/300	300
	Nordic Skiing	25/300/300	300
	Pack and Saddle Stock, Equestrian	25/500/500	500
	Rafting and Boating		
	Class IV-V Rafting and Boating	25/500/1000	1000
	Class I-III	25/500/500	500



Rock Climbing	25/500/500	500
Running and Walking Events	25/300/300	300
Snowmobiling	25/500/500	500

MINIMUM COVERAGE AMOUNTS FOR LIABILITY INSURANCE			
FSM Cite	Type of Special Use	Minimum Coverage Amount (in thousands of dollars)	
2721.54	Rental Services	25/100/300	300
2721.55	Restaurant	25/100/300	300
2721.56	Service Station	25/100/300	300
2721.57	Store, Shop, Offices	25/100/300	300
2721.58	Vendor and Peddler	25/100/300	300
2721.61	Winter Sports Resorts		
	Nordic Skiing	25/300/500	500
	Snow Play	25/500/1000	1000
	Alpine Skiing	25/500/2000	2000
	Avalanche Training	25/500/1000	1000
2721.62	Lifts	50/500/2000	2000
2721.63	Ski Slopes	50/500/2000	2000
2721.64	Ski Activities	25/100/300	300
2721.65	Snow Play	25/500/1000	1000

{}

51 - INDEX

51.1 - Title Index to Clauses

Title	Category and Number
Operating Plan for Supervision of Children (For Ski Area)	C-15
{}	
Ski Area Permit Fees	A-9
{}	
Water Facilities and Water Rights (Ski Area, Prior Appropriation)	D-30
Water Facilities and Water Rights (Ski Area, Riparian)	D-31

51.2 - Alphanumeric Index to Clauses

The following table lists the clauses in section 53.

Category and Number	Title
{}	LAND USE FEES AND PAYMENTS
A-9	Ski Area Permit Fees
{}	
C-15	Operating Plan for Supervision of Children (For Ski Areas)
{}	Aerial Adventure Course Plans and Specifications
D-30	Water Facilities and Water Rights (Ski Areas, Prior Appropriation)
D-31	Water Facilities and Water Rights (Ski Areas, Riparian)

51.3 - Mandatory Supplemental Clauses and Appendices

1. The following table lists mandatory supplemental clauses and appendices by topic. If a mandatory supplemental clause is already included in the applicable special use authorization form, do not repeat the clause.

MANDATORY SUPPLEMENTAL CLAUSES AND APPENDICES BY TOPIC

Topic	Clause Number	Mandatory In:
{}		
Operating Plan for Supervision of Children (For Ski Areas)	C-15	All ski area permits that provide ski schools and/or day care for children.
{}		

Topic	Clause Number	Mandatory In:
Ski Area Permit Fees	A-7 through A-9	All winter recreation special use authorizations subject to the ski area permit fee established by 16 U.S.C. 497c.
[]	X-18	All authorizations that supersede an authorization for the same use.
Water Facilities and Water Rights – Ski Areas, Prior Appropriation	D-30	All winter recreation special use authorizations in prior appropriation states. (Included in FS-2700-5b).
Water Facilities and Water Rights – Ski Areas, Riparian	D-31	All winter recreation special use authorizations in riparian states. (Included in FS-2700-5b).

2. Use the following table to determine the mandatory special use authorization form, supplemental clauses, and appendices for each type of special use. If a mandatory supplemental clause is already included in the applicable special use authorization form, do not repeat the clause.

**MANDATORY SPECIAL USE AUTHORIZATION FORMS, SUPPLEMENTAL CLAUSES, AND
APPENDICES BY TYPE OF USE**

DESIGNATION	FSM	USE CODE	MANDATORY
[]			
Winter recreation resort	2721.61	161	FS-2700-5b with C-15 if applicable, D-30 in prior appropriation states or D-31 in Riparian States.
Ski lift, tow (ropeway)	2721.62	162	FS-2700-5b
Ski slope, ski trail	2721.63 (see FSM 2721.6)	163	FS-2700-4 with B-1, B-2, B-10, C-8
Ski activity	2721.64 (see FSM 2721.6)	164	FS-2700-4 with B-1, B-2, B-10, C-8
[]			

52 - SUPPLEMENTAL CLAUSES

Supplemental clauses are categorized as follows:

Category	Title
A	Land Use Fees and Payments
B	Safety, Health, Liability, and Nondiscrimination
C	Development, Construction, Operations, and Performance Bonds
D	Resource and Improvement Protection
E	Tenure, Termination, Revocation, and Limit of Use
F	Fire
G	Roads
X	Miscellaneous

52.1 - A Clauses: Land Use Fees and Payments

[]

B. GRFS FEE RATES. The annual fees due the United States for those activities authorized by this permit shall be calculated on sales according to the following schedule:

	Break-even point (Sales to GFA) (Percentage)	Rate Base (Percentage)	Balance of Sales Rate (Percentage)
Grocery	70	.75	1.13
Service, food	70	1.25	1.88
Service, car	70	1.30	1.95
Merchandise	70	1.50	2.25
Liquor Service	60	1.80	2.70
Outfitting/Guiding	50	2.00	3.00
Rental and Services	30	4.50	6.75
Lodging	40	4.00	6.00
Lifts, Tows, and Ski Schools	20	2.00	5.00

[]

C. DEFINITIONS OF SALES CATEGORIES AND GFA

1. Sales Categories. For purposes of recording and reporting sales, and sales-related information including the cost of sales, the activities of the concessionaire are divided into:

[]

Lifts, Tows, and Ski Schools. Includes changes for use of all types of uphill transportation facilities and for sports lessons and training.

[]

A-9. Ski Area Permit Fees.

A. NEW LAND USE FEE SYSTEM. The Forest Service shall adjust and calculate land use fees authorized by this permit to reflect any revisions to land use fee provisions in 16 U.S.C. 497c or to comply with any new land use fee system based on market value that may be adopted by statute or otherwise after issuance of this permit.

B. SKI AREA PERMIT FEE CALCULATION. The annual ski area permit fee (SAPF) due the United States for the activities authorized by this permit shall be calculated using the following formula:

$$\text{SAPF} = (.015 \times \text{AGR in bracket 1}) + (.025 \times \text{AGR in bracket 2}) + (.0275 \times \text{AGR in bracket 3}) + (.04 \times \text{AGR in bracket 4}), \text{ where:}$$

SAPF		the ski area permit fee for use of NFS lands;
AGR		adjusted gross revenue;
AGR	=	$[(LT + SS) \times (\text{proration } \%)] + \text{GRAF}$, prorated as applicable;
LT		revenue from sales of alpine and Nordic lift tickets and passes;
SS		revenue from alpine and Nordic ski school operations;
Proration %		the factor used to prorate LT and SS revenue between NFS lands and private land in the ski area; and
GRAF		gross year-round revenue from ancillary facilities located on NFS lands, prorated as applicable.

1. SAPF Formula. The SAPF shall be calculated by summing the products of the amount of the holder's AGR that falls into each of the four revenue brackets multiplied by the applicable percentage rate, as shown in the table below. AGR shall be determined in accordance with clause VI.B.2. The SAPF shall be calculated based on the holder's fiscal year, unless mutually agreed otherwise by the holder and the Authorized Officer.

The four revenue brackets shall be adjusted annually using the consumer price index (CPI-U) Issued in FSH 2709.11, chapter 30. The revenue brackets shall be indexed for the previous calendar year. The holder's AGR for any fiscal year shall not be split into more than one set of indexed brackets. Only the revenue in each bracket shall be updated annually. The percentage rates shall not change.

The revenue brackets and percentages in FSH 2709.11, 38.12, exhibit 01, shall be used as shown in the preceding formula to calculate the SAPF. The revenue brackets for FY 2011 through 2016 are shown below.

Clause A-9--Continued

Revenue Brackets* and Corresponding Percentage Rates				
Holder FY	Bracket 1 1.5%	Bracket 2 2.5%	Bracket 3 2.75%	Bracket 4 4%
FY 2011 CPI: 1.012	All revenue below \$4,285,000	\$4,285,000 to <\$21,431,000	\$21,431,000 to \$71,437,000	All revenue over \$71,437,000
FY 2012 CPI: 1.036	All revenue below \$4,439,000	\$4,439,000 to <\$22,203,000	\$22,203,000 to \$74,009,000	All revenue over \$74,009,000
FY 2013 CPI: 1.014	All revenue below \$4,501,000	\$4,501,000 to <\$22,514,000	\$22,514,000 to \$75,045,000	All revenue over \$75,045,000
FY 2014 CPI: 1.020	All revenue below \$4,591,000	\$4,591,000 to <\$22,964,000	\$22,964,000 to <\$76,546,000	All revenue over \$76,546,000
FY2015 CPI: 1.020	All revenue below \$4,683,000	\$4,683,000 to <\$23,423,000	\$23,423,000 to \$78,077,000	All revenue over \$78,077,000
FY2016 CPI: 1.002	All revenue below \$4,692,000	\$4,692,000 to <\$23,470,000	\$23,470,000 to \$78,233,000	All revenue over \$78,233,000

*The Washington Office, Director of Recreation, Heritage, and Volunteer Resources updates the revenue brackets annually based on the Consumer Price Index (CPI-U), Table A, which is published monthly at <http://www.bls.gov>. The rate should be applied prospectively upon any payment due on or after January 1, through the next calendar year. For example, use of the 2012 rate issued in October 2011 should commence for the next set of fee calculations and billings with a due date on or after January 1, 2012.

2. Calculation of AGR. AGR shall be calculated by summing the year-round revenue from the sale of lift tickets and ski school operations prorated for use of NFS lands and from GRAF, prorated as applicable.

Clause A-9--Continued

a. The following shall be included in AGR:

- (1) Prorated LT. Year-round revenue from sales of alpine and Nordic ski area passes and lift tickets, including revenue generated on private land (such as from lift tickets sold on private land), prorated according to the percentage of use between NFS lands and private land in the ski area per clause VI.B.3.a and VI.B.3.b;
- (2) Prorated SS. Revenue from alpine and Nordic ski school operations, including lessons provided to teach alpine or Nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing, even if the lessons are purchased on private land, prorated according to the percentage of use between NFS lands and private land in the ski area per clause VI.B.3.a and VI.B.3.b;
- (3) GRAF, Prorated As Applicable. Gross year-round revenue from temporary and permanent ancillary facilities, including all the holder's or subholder's lodging, food service, rental shops, parking, and other ancillary operations, located on NFS lands in the permit area, prorated, as applicable, according to the percentage of use between NFS lands and private land in the ski area per clause VI.B.3.c. Revenue generated from ancillary facilities on private land shall not be included in AGR;
- (4) Bartered Goods and Complimentary Lift Tickets. The market price of bartered goods and complimentary lift tickets offered for commercial or other promotional purposes, such as for advertising. The value of bartered goods and complimentary lift tickets offered for commercial or other promotional purposes shall be categorized as LT, SS, or GRAF, as appropriate; and
- (5) Special Event Revenue. Revenue from events such as food festivals, foot races, and concerts on NFS lands in the permit area. Special event revenue shall be included in the AGR formula as LT, SS, or GRAF, as applicable. The revenue shall be prorated according to the percentage of use between NFS lands and private land per clause VI.B.3.

Discriminatory pricing, such as, pricing based solely on race, religion, sex, national origin, or place of residence, is prohibited under clause III.N or III.O, but if it occurs, the amount that would have been received had discriminatory pricing not occurred shall be included in AGR.

b. The following shall be excluded from AGR:

- (1) Revenue from sales of operating equipment;
- (2) Refunds;

Clause A-9—Continued

- (3) Rent paid to the holder by subholders or lessees;
- (4) Sponsor contributions to special events;
- (5) Employee gratuities and employee lift tickets;
- (6) Lift tickets and passes provided for public safety or public service purposes (such as for the National Ski Patrol or for volunteers to assist in the Special Olympics);
- (7) Discounts; and
- (8) Any other goods and services (other than bartered goods and complimentary lift tickets offered for commercial or other promotional purposes) for which the holder receives no money.

3. Proration of Revenue. Alpine and Nordic revenue shall be prorated separately. Prorated revenues shall be added together and summed with GRAF to produce AGR. One or more of the following methods, as appropriate, shall be used to prorate revenue:

- a. Alpine revenue shall be prorated using the slope transport feet percentage (STFP), per the direction in FSM 2715.11c, effective in 1992. Only uphill devices (lifts, tows, and tramways) that are fundamental to the winter sports operation (usually those located on both Federal and private land) shall be included in the calculation. People movers whose primary purpose is to shuttle people between parking areas or between parking areas and lodges and offices shall not be included.
- b. Nordic revenue shall be prorated using the percentage of Nordic trail length on NFS lands to total Nordic trail length.
- c. For ancillary facilities that are partially located on NFS lands, the ratio of the facility square footage located on NFS lands to the total facility square footage shall be calculated, and the revenue for ancillary facilities shall be prorated in accordance with this ratio. Special event revenue allocatable to GRAF shall be prorated by the ratio of use on NFS lands to the total use.

4. Absence of AGR. In cases when the holder has no AGR for a given fiscal year, the holder shall pay a land use fee of \$2 per acre for NFS lands under permit or a percentage of the appraised value of NFS lands under permit, at the discretion of the Authorized Officer.

Clause A-9—Continued

C. SAPF PAYMENTS. Reports and deposits shall be sent or delivered to the Collection Officer, USDA, Forest Service, at the address furnished by the Authorized Officer. Checks or money orders shall be made payable to USDA, Forest Service.

1. The holder shall calculate and submit an advance payment which is due by the beginning of the holder's payment cycle. The advance payment shall equal 20 percent of the holder's average SAPF for 3 operating years, when available. When past SAPF information is not available, the advance payment shall equal 20 percent of the SAPF, based on the prior holder's average SAPF or projected AGR. For ski areas not expected to generate AGR for a given payment cycle, advance payment of the SAPF as calculated in clause VI.B.4 shall be made. The advance payment shall be credited toward the total SAPF for the payment cycle.

2. The holder shall report sales, calculate the SAPF due based on a tentative percentage rate, and make interim payments each calendar _____, except for periods in which no sales take place and the holder has notified the Authorized Officer that the operation has entered a seasonal shutdown for a specific period. Reports and payments shall be made by the end of the month following the end of each reportable period. Interim payments shall be credited toward the total SAPF for the payment cycle.

3. Within 90 days after the close of the ski area's payment cycle, the holder shall provide a financial statement, including a completed SAPF information form, Form FS-2700-19a, representing the ski area's financial condition at the close of its business year and an annual operating statement reporting the results of operations, including a final payment which includes year-end adjustments for the holder and each subholder for the same period. Any balance that exists may be credited and applied against the next payment due or refunded, at the discretion of the holder.

4. Within 30 days of receipt of a statement from the Forest Service, the holder shall make any additional payment required to ensure that the correct SAPF is paid for the past year's operations.

5. All SAPF calculations and records of sales are subject to review or periodic audit as determined by the Authorized Officer. Errors in calculation or payment shall be corrected as needed for conformance with those reviews or audits. In accordance with clause VI.E, interest and penalties shall be assessed on additional fees due as a result of reviews or audits.

[]

B-29. Explosives. This clause is mandatory in all special use authorizations where explosives are likely to be used, except for uses authorized with the Ski Area Term Special Use Permit, Form FS-2700-5b.

[]

C-15. Operating Plan for Supervision of Children (For Ski Areas). The following clause must be included as clause III.C.13 in form FS-2700-5b for all Ski Area Permits that involve the provision of health care (including but not limited to first aid), teaching or instruction (including but not limited to ski schools), or child care to children under the age of 18 by the holder, holder's employees, agents, or contractors:

The operating plan must provide that if the holder, holder's employees, agents, or contractors learn of facts that give reason to suspect that a child under the age of 18 has suffered physical or mental injury, sexual abuse or exploitation, or negligent treatment (child abuse), the holder, holder's employees, agents, or contractors shall as soon as possible report the child abuse to [the local law enforcement or child protective services agency, as designated in 28 CFR Part 81, Subpart A] and as soon as practicable thereafter to the Authorized Officer. The operating plan shall include:

1. The name, address, telephone number, facsimile number, and e-mail address of [the local law enforcement or child protective services agency, as designated in 28 CFR Part 81, Subpart A].
2. A schedule for providing periodic training on the signs of child abuse and the reporting requirement when child abuse is suspected.
3. A Sample for Reporting Suspected Child Abuse or Neglect and, to the extent mandated by applicable state law, the requirement for all employees who work with children under the age of 18 to undergo a criminal background check.

[]

D-30. Water Facilities and Water Rights – Ski Areas in Prior Appropriation Doctrine States.

Include clause D-30 in ski area permits in prior appropriation doctrine States when these permits are issued, reissued, or modified under 36 CFR 251.61. Do not use clause D-30 in Michigan, Vermont, and New Hampshire, which are riparian doctrine States. Clause D-30 supersedes all previous ski area water rights clauses in the Directive System. When inserting Clause D-30, remove any prior ski area water rights clauses from the ski area permit. If there is a conflict between this ski area water clause and any other Forest Service permit clause regarding water rights or water facilities, this clause shall control. Do not apply the possessory interest policy in FSM 2541.32, paragraph 2, to ski area permits.

Before issuing a new or modified ski area permit in a prior appropriation doctrine State, the Authorized Officer shall:

- (1) Ensure that water facilities on National Forest System (NFS) lands that are used primarily for operation of the ski area are authorized by the ski area permit, designated on a map attached to the permit, and included in an inventory in Appendix [letter] to this permit. However, existing water facilities on NFS lands which are authorized by a separate, valid special use permit may remain under such separate authorization, including upon reissuance, if eligible.
- (2) Require the applicant to submit documentation prepared by the applicant's qualified hydrologist or licensed engineer demonstrating that the applicant holds or can obtain a sufficient quantity of water to operate the permitted portion of the ski area. The documentation submitted shall identify all water sources, water rights, and water facilities necessary to demonstrate a sufficient quantity of water to operate the ski area, including all original water rights as defined in paragraph F.3.a(2) of clause D-30, all water facilities to be authorized by the ski area permit, and any existing restrictions on withdrawal or diversion of water that are required to comply with a statute or an involuntary court order that is binding on the Forest Service.

Before authorizing a new water facility under a ski area permit, the Authorized Officer shall require the holder to submit documentation prepared by the holder's qualified hydrologist or licensed engineer demonstrating that the holder has sufficient water or water rights to operate the water facility.

"Used primarily for operation of the ski area" in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than any other use.

"Sufficient quantity of water to operate the ski area" means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the applicant's qualified hydrologist or licensed engineer, the applicant has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities to be authorized under the ski area permit in accordance with the proposed operating plan.

Optional paragraph F.1.f should be added to ski area permits in California, which has both prior appropriation doctrine and riparian doctrine systems.

F. WATER FACILITIES AND WATER RIGHTS.

“Used primarily for operation of the ski area” in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than for any other use.

“Sufficient quantity of water to operate the ski area” means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the holder’s qualified hydrologist or licensed engineer, the holder has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities authorized under the ski area permit in accordance with the approved operating plan.

1. Water Facilities.

a. The term “water facility” means a facility located on NFS lands that diverts withdraws, stores, or distributes water, such as a diversion, ditch, pipeline, reservoir, well, tank, impoundment structure, or similar facility or feature.

b. The term “ski area water facility” means any water facility on NFS lands that is authorized by this permit and used primarily for operation of the ski area authorized by this permit (hereinafter “ski area”).

c. The Authorized Officer may place conditions, as necessary to protect public property, public safety, cultural resources, and natural resources on NFS lands, on the installation, operation, maintenance, and removal of any water facility, but only in accordance with applicable law. This clause D-30 does not expand or contract the agency’s authority to place conditions on the installation, operation, maintenance, and removal of water facilities at issuance or reissuance of the permit, throughout the permit term, or otherwise.

The holder must comply with present and future laws, regulations, and other legal requirements in accordance with section I of this permit.

d. Only ski area water facilities may be authorized by this permit.

e. If due to a change (for example, due to a change in the ownership of the water facility or the associated water rights or a change in the beneficial use, location, or season of use of the water) a ski area water facility will primarily be used for purposes other than operation of the ski area, the authorization for that ski area water facility under this permit shall terminate. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, the holder must obtain a separate special use

authorization to operate that water facility or to develop any new water facility on NFS lands that is used primarily for purposes other than operation of the ski area. When such facilities continue to support approved ski area operations at any time of year, the separate special use authorization for these water facilities shall not contain any possessory interest policy based on FSM 2541.32, paragraph 2 (or similar clauses), any waiver provision, or any power of attorney provision. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, if the holder does not obtain a separate special use authorization for these water facilities, the holder shall remove them from NFS lands.

<USER NOTE FOR PARAGRAPH F.1.f>

<Insert paragraph F.1.f in permits issued in California, which has both prior appropriation doctrine and riparian doctrine systems. Otherwise, omit this paragraph.>

f. This permit does not convey, dispose of, extinguish, or otherwise effect a transfer of any title, rights, or interest of the United States or the holder as a riparian or littoral landowner. The United States and the holder retain all rights, title, and interests they have as riparian or littoral landowners.

2. Water Rights. The term “water right” as used below means a right to use water that is recognized under state law under the prior appropriation doctrine. This permit does not confer any water rights.

3. Acquisition and Maintenance of Water Rights.

a. Terms.

(1) The term “ski area water right” means any water right for use of water from a point of diversion on NFS lands, either inside or outside the permit boundary, that is primarily for operation of the ski area.

(2) The term “original water right” means any existing or new ski area water right with a point of diversion that was or is, at all times during its use, located within the permit boundary for this ski area and originally established under State law through an application for a decree to State water court, permitting, beneficial use, or otherwise recognized method of establishing a new water right, in each case by the holder or a prior holder of the ski area permit. The term “original water right” shall not include any “acquired water right” and shall not be deemed to become an “acquired water right” by virtue of the sale of the original water right to a subsequent holder of the ski area permit.

(3) The term “acquired water right” means any ski area water right that is purchased, bartered, exchanged, leased, or contracted by the holder or by any prior holder, except as expressly provided in the last sentence of paragraph F.3.a(2).

b. An inventory of all ski area water facilities and original water rights is included in Appendix [letter] of this permit and shall be updated by the holder upon reissuance of this permit, upon installation or removal of a ski area water facility, when a listed ski area water facility is no longer authorized by this permit, or when an original water right is no longer used for operation of the ski area.

c. Original water rights must be established in accordance with applicable State law. The holder, not the United States, shall bear the cost of establishing, acquiring, maintaining, and perfecting original water rights, including any original water rights owned solely or jointly by the United States.

d. Original water rights owned solely by the United States and the United States’ interest in jointly owned original water rights shall remain in Federal ownership. Notwithstanding the holder’s obligation to maintain original water rights owned by the United States, the United States reserves the right to take any action necessary to maintain and protect those water rights, including submitting any applications or other filings that may be necessary to protect the water rights.

4. Ensuring Sufficiency of Water Rights and Water for Permitted Ski Area Operations.

a. Where the United States solely or jointly owns water rights used by the holder, the Forest Service shall not divide or transfer ownership of or seek any change in those water rights that would adversely affect their availability for operation of the ski area during the term of this permit, unless required to comply with a statute or an involuntary court order that is binding on the Forest Service.

b. Where the holder solely or jointly owns original water rights, the holder shall not divide or transfer ownership of or seek any change in those water rights that would adversely affect their availability for operation of the ski area during the term of this permit, unless approved in writing in advance by the Authorized Officer. In deciding whether to grant this approval, the Authorized Officer shall consider any documentation prepared by the holder’s qualified hydrologist or licensed engineer demonstrating that such action will not result in a lack of a sufficient quantity of water to operate the permitted portion of the ski area.

c. At any time and solely within its discretion, the holder may seek to change, abandon, lease, divide, or transfer ownership of or take other actions with respect to acquired water rights. Following such actions, paragraph F.1.e shall apply to the associated ski area water facilities.

5. Transfer of Certain Water Rights With Sale of the Ski Area Improvements.

a. Upon termination or revocation of this permit, the holder shall offer to sell the holder's interest in any solely or jointly owned original water rights at market value to the succeeding permit holder. If the succeeding permit holder declines to purchase original water rights owned solely by the holder, the holder may transfer them to a third party. If the succeeding permit holder declines to purchase the holder's interest in original water rights jointly held with the United States, the holder shall offer to sell that interest at market value to the United States. If the United States declines to purchase that interest, the holder may abandon, divide, lease, or transfer its interest at its sole discretion. This clause imposes no restrictions on acquired water rights. There are no restrictions on the transfer or abandonment of acquired water rights. In all instances, the holder shall retain the full amount of any consideration paid for water rights. Following such actions, paragraph F.1.e shall apply to the associated ski area water facilities.

b. If the Forest Service does not reauthorize the ski area, the holder may submit a proposal to the Forest Service for a permit authorizing a different use for the ski area water facilities. If a different use is not authorized for those water facilities, the holder shall remove them from NFS lands. The holder may, in its sole discretion, abandon, divide, lease, or transfer any water rights solely owned by the holder. The holder shall offer to sell to the United States the holder's interest in original water rights jointly owned with the United States at market value. If the United States declines to purchase that interest, the holder may abandon, divide, lease, or transfer its interest at its sole discretion.

APPENDIX [Letter]

INVENTORY OF SKI AREA WATER FACILITIES AND ORIGINAL WATER RIGHTS

<List only ski area water facilities authorized by this permit and original water rights.>

SKI AREA WATER FACILITIES (if none, so state)

Facility Name	Facility Location	Type of Facility	Capacity	Purpose of Use

ORIGINAL WATER RIGHTS (if none, so state)

State ID #	Owner	Purpose of Use	Decree, License, or Certificate #	Point of Diversion	State-Approved Place of Use

D-31. Water Facilities and Water Rights – Ski Areas in Riparian Doctrine States. Include clause D-31 in ski area permits in Michigan, Vermont, and New Hampshire when these permits are issued, reissued, or modified under 36 CFR 251.61. Do not use clause D-31 in western States utilizing a prior appropriation doctrine system. Clause D-31 supersedes all previous ski area water rights clauses in the Directive System. When inserting clause D-31, remove any prior ski area water rights clauses from the ski area permit. If there is a conflict between this ski area water clause and any other Forest Service permit clause regarding water rights or water facilities, this clause shall control. Do not apply the possessory interest policy in FSM 2541.32, paragraph 2, to ski area permits.

Before issuing a new or modified ski area permit in a riparian doctrine State, the Authorized Officer shall:

(1) Ensure that all water facilities on National Forest System (NFS) lands that are used primarily for operation of the ski area are authorized by the ski area permit, designated on a map attached to the permit, and included in an inventory in Appendix [letter] to this permit. However, existing water facilities on NFS lands which are authorized by a separate, valid special use permit may remain under such separate authorization, including upon reissuance, if eligible.

(2) Require the applicant to submit documentation prepared by the applicant's qualified hydrologist or licensed engineer demonstrating that the applicant holds or can obtain a sufficient quantity of water to operate the permitted portion of the ski area. The documentation submitted shall identify all water sources, water rights, and water facilities necessary to demonstrate a sufficient quantity of water to operate the ski area, all water facilities to be authorized by the ski area permit, and any existing restrictions on withdrawal or diversion of water that are required to comply with a statute or an involuntary court order that is binding on the Forest Service.

Before authorizing a new water facility under a ski area permit, the Authorized Officer shall require the holder to submit documentation prepared by the holder's qualified hydrologist or licensed engineer demonstrating that the holder has sufficient water or water rights to operate the water facility.

“Used primarily for operation of the ski area” in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than any other use.

“Sufficient quantity of water to operate the ski area” means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the applicant’s qualified hydrologist or licensed engineer, the applicant has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities to be authorized under the ski area permit in accordance with the proposed operating plan.

F. WATER FACILITIES AND WATER RIGHTS.

“Used primarily for operation of the ski area” in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than for any other use.

“Sufficient quantity of water to operate the ski area” means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the holder’s qualified hydrologist or licensed engineer, the holder has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities authorized under the ski area permit in accordance with the approved operating plan.

1. Water Facilities.

a. The term “water facility” means a facility located on NFS lands that diverts, withdraws, stores, or distributes water, such as a diversion, ditch, pipeline, reservoir, well, tank, impoundment structure, or similar facility or feature.

b. The term “ski area water facility” means any water facility on NFS lands that is authorized by this permit and used primarily for operation of the ski area authorized by this permit (hereinafter “ski area”).

c. The Authorized Officer may place any conditions, as necessary to protect public property, public safety, cultural resources, and natural resources on NFS lands, on the installation, operation, maintenance, and removal of any water facility, but only in accordance with applicable law. This clause D-31 does not expand or contract the agency’s authority to place conditions on the installation, operation, maintenance, and removal of water facilities at issuance or reissuance of the permit, throughout the

permit term, or otherwise. The holder must comply with present and future laws, regulations and other legal requirements in accordance with section I of this permit.

d. Only ski area water facilities may be authorized by this permit.

e. An inventory of all ski area water facilities is included in Appendix [letter] of this permit and shall be updated by the holder upon reissuance of this permit, upon installation or removal of a ski area water facility, or when a listed ski area water facility is no longer authorized by this permit.

f. If due to a change (for example, due to change in ownership of the water facility or the associated water rights or a change in the use, location, or season of use of the water) a ski area water facility will primarily be used for purposes other than operation of the ski area, the authorization for that water facility under this permit shall terminate. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, the holder must obtain a separate special use authorization to operate that water facility or to develop any new water facility on NFS lands that is used primarily for purposes other than operation of the ski area. When such facilities continue to support approved ski area operations at any time of year, the separate special use authorization for these water facilities shall not contain any possessory interest policy based on FSM 2541.32, paragraph 2 (or similar clauses), any waiver provision, or any power of attorney provision. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, if the holder does not obtain a separate special use authorization for these water facilities, the holder shall remove them from NFS lands.

g. Upon termination or revocation of this permit, if the Forest Service does not reauthorize the ski area, the holder may submit a proposal to the Forest Service for a permit authorizing a different use for the ski area water facilities. If a different use is not authorized for those water facilities, the holder shall remove them from NFS lands.

2. Water Rights. This permit does not convey, dispose of, extinguish, or otherwise effect a transfer of any title, rights, or interest of the United States or the holder as a riparian or littoral landowner. The United States and the holder retain all rights, title, and interest they have as riparian or littoral landowners.

APPENDIX [LETTER]

INVENTORY OF SKI AREA WATER FACILITIES

<List only ski area water facilities authorized by this permit.>

SKI AREA WATER FACILITIES (if none, so state)

Facility Name	Facility Location	Facility Type	Capacity	Purpose of Use

[]

53 - SPECIAL USE AUTHORIZATION FORMS

[]

Section 53, exhibit 01, lists current special use authorizations forms.

[]

Term Special Use Permits

FS-2700-5b	Ski Area Term Special Use Permit	Sec. 53.23
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[]

53.23 - Form FS-2700-5b, Ski Area Term Special Use Permit

Use form FS-2700-5b to issue term permits for Nordic and alpine ski areas. See FSM 2721.61 for additional direction on issuance of these permits. The following instructions apply to use of form FS-2700-5b:

1. Clause I.C, Term. Insert the date when this permit will expire and the number of years between its issuance and expiration, not to exceed 40 years. Refer to FSH 2709.14, 61.1 to determine the permit's term.
2. Clause II.E, Ropeway Plans and Specifications. Delete this clause in permits issued for Nordic ski areas with no ropeways.
3. Clause III.B, Period of Use. Insert the number of days in the typical ski season for the ski area to be authorized.
4. Clause III.L, Ropeway Inspections. Delete this clause in permits issued for Nordic ski areas with no ropeways.

5. Clause III.A, Operating Plan. Insert two dates when separate winter and summer operating plans are prepared. Delete inapplicable items in the list of topics. Add clause C-15 when operations involve the provision of health care (including but not limited to first aid), teaching or instruction (including but not limited to ski schools), or child care to children under the age of 18 by the holder, holder's employees, agents, or contractors.

6. Section VIII, Miscellaneous Provisions. The Authorized Officer may add additional clauses to address site-specific conditions, provided that they do not conflict with the standard clauses in the form.

[]

54 **SUPPLEMENTAL FORMS, REPORTS, AND AGREEMENTS** (FSH 2709.11) (date January 1, 2016)

[]

54.22c Form FS-2700-19a, Fee Calculation for Ski Area Permits

[]

Supplemental Recreation Use Forms and Reports

Form Number	Title	Direction in FSH 2709.11
FS-2700-19a	Fee Calculation for Ski Area Permits	Sec. 54.22c

[]

54.22c - Form FS-2700-19a, Fee Calculation for Ski Area Permits

Use form FS-2700-19a to determine the land use fee for ski area permits. Directions for completing the form are found on the reverse side of the form. For additional direction on use of this form, see FSM 2715.

[]

4. Determining Sales and Other Revenue

a. Sales.

(1) Sales for the purpose of fee calculation include:

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

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

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

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

[]

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

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

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

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

[]

6. Mixed Landownership. Concessions covered by Forest Service special use permits sometimes operate on lands of mixed ownership; that is, a single operation may occupy

both public and private land, the former covered by the permit and the latter either owned or controlled by the permittee.

[]

b. Ownership Proration Methods.

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

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

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

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

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

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

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

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

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

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

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

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

The method of proration to be used shall be the slope transport fee method. In this method, the capacity (or actual use) of each lift is multiplied by the slope distance

traveled by that lift through each ownership. This provides a factor called slope transport feet. These factors are added for each ownership and the percentage they bear to the total is determined. The resulting percentages reflect, by ownership, the weighted capacity of the lifts to accommodate skiers.

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

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

Slope distance shall be established as:

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



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

OWNERSHIP PRORATION BASED ON SLOPE TRANSPORT FEET METHOD

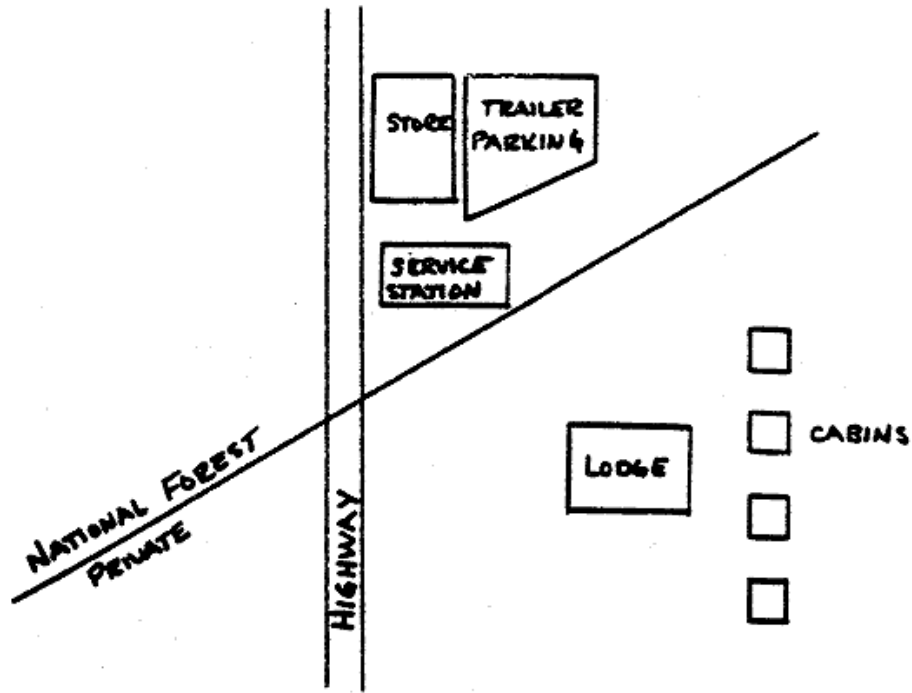
Lift	Ride capacity per hour <u>1/</u>	Slope distance by landownership (in feet) <u>2/</u>			Slope transport feet (slope length times capacity)		Total
		National Forest	Private	Total	National Forest	Private	
1	400	2,200	2,000	4,200	880,000	800,000	1,680,000
2	600	3,600	-	3,600	2,160,000	-	2,160,000
3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

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

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

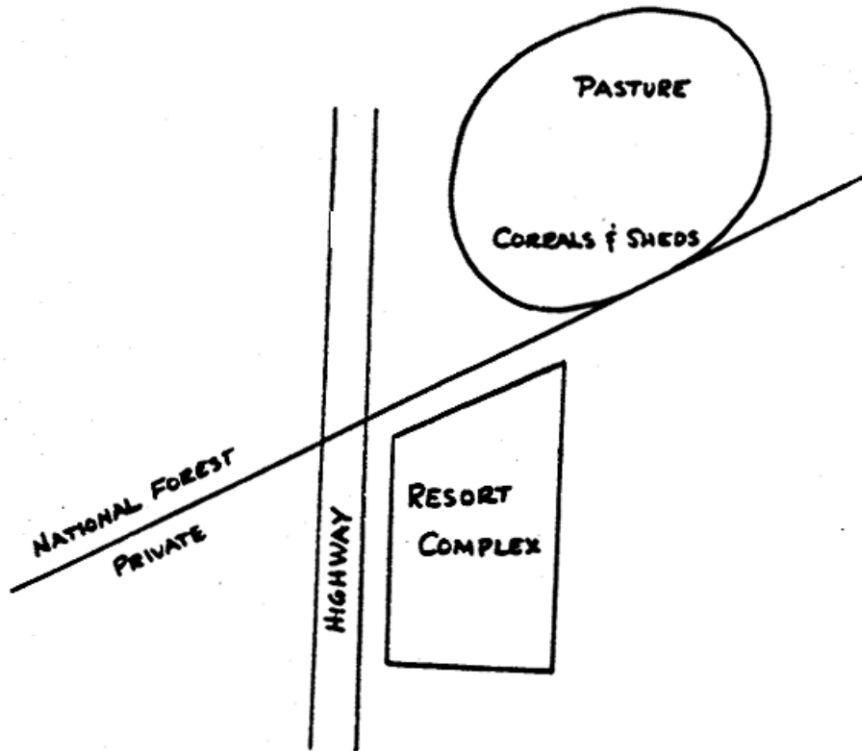
c. Sample Prorations. On the pages that follow are some diagrammatic sketches and accompanying statements, describing a series of possible mixed ownership situations. "Solutions" show reasonable answers to the question, "How are GFA and sales prorated?"

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



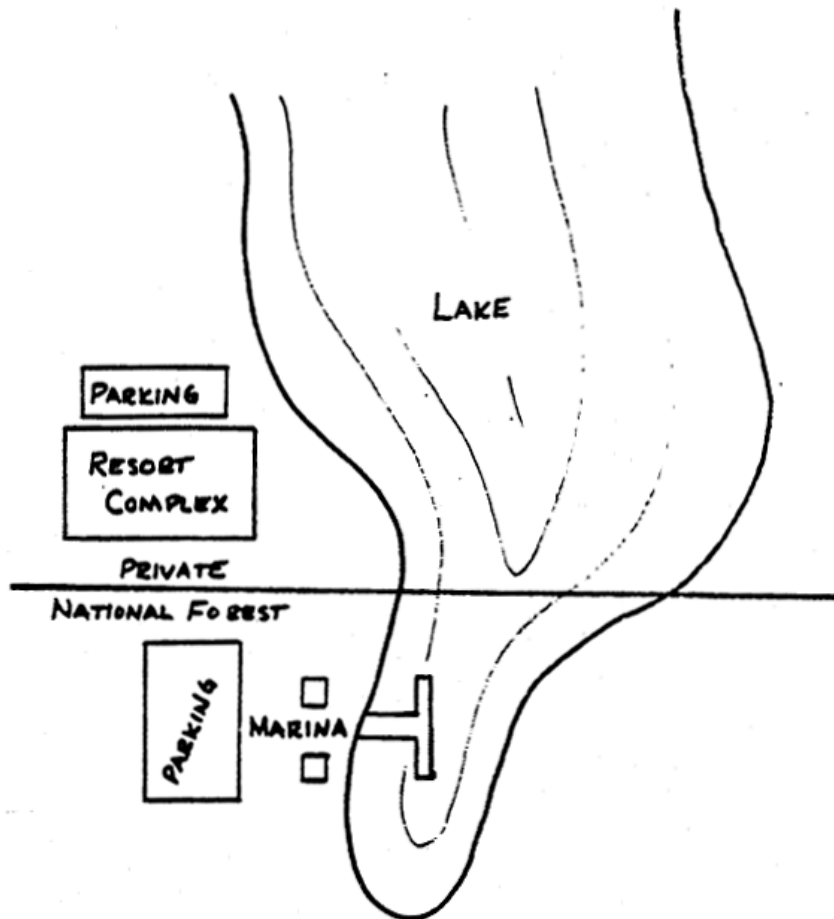
Solution. Fees will be based on GFA and sales from the portion of the business on National Forest. The investment and sales of private land development will be disregarded.

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



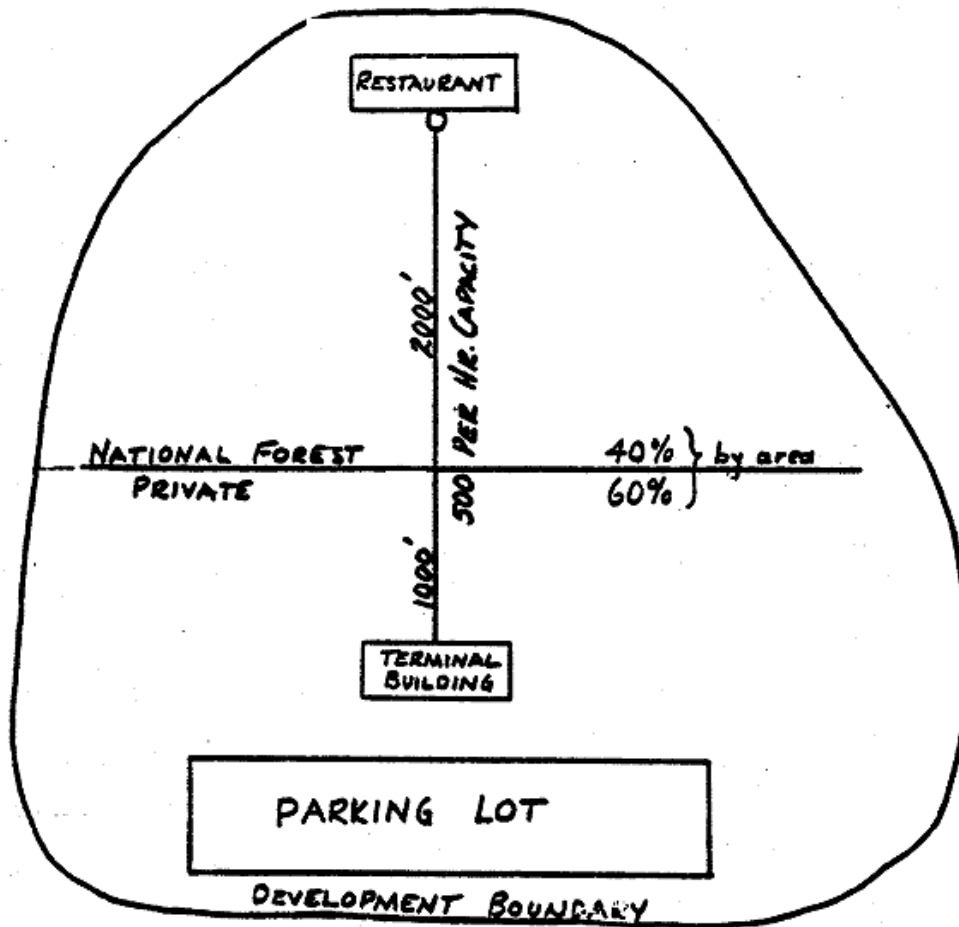
Solution. Graduated rate system not to be used. Determine fee based on pasture use and appropriate amounts for outfitter-guide permit if one is involved.

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



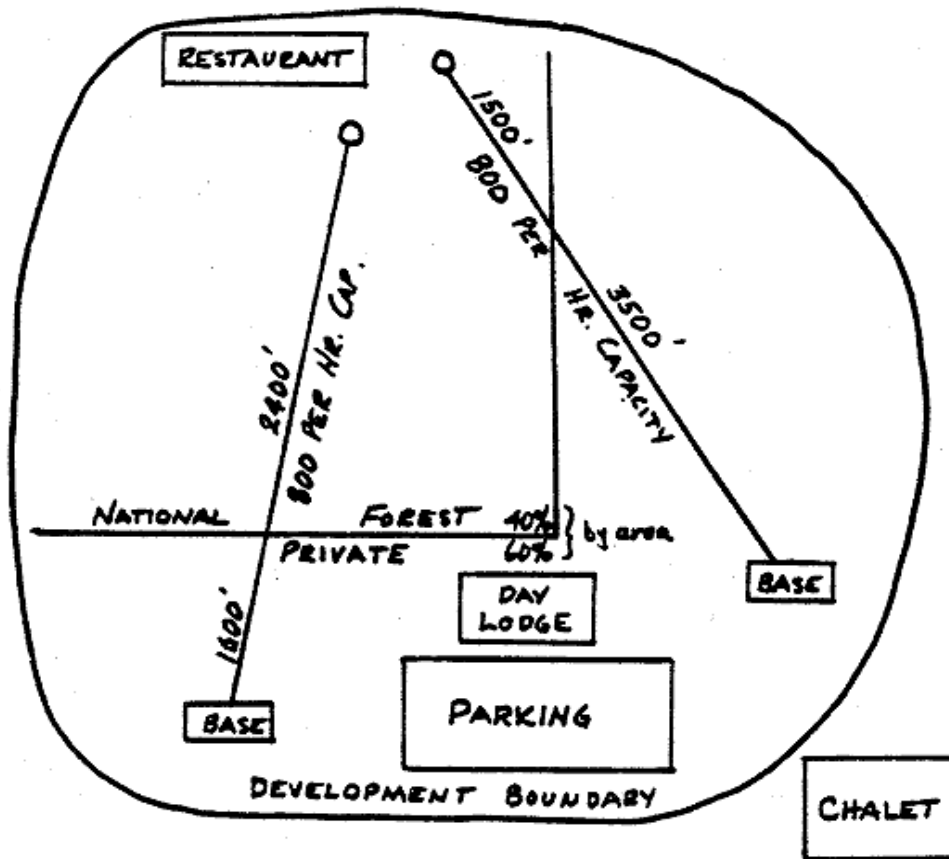
Solution. Develop GFA from cost of marina, boats and parking and sales from marina as a single business; rental, other. Disregard investment and sales of resort.

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



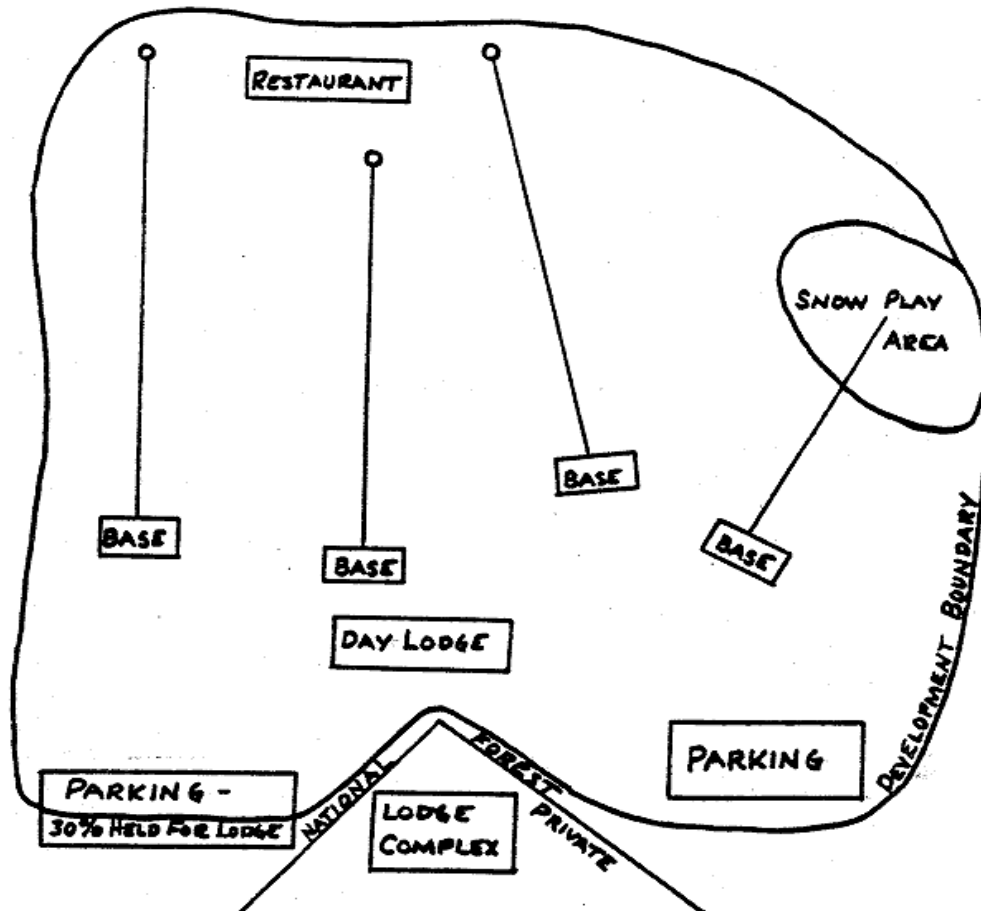
Solution. Because there is only one lift, proration is based on slope length only. GFA and sales of the lift, restaurant, terminal development, and parking area are prorated; two thirds to National Forest and one third to private.

(5) Situation. A winter-sports area where the parking lot, day lodge, and chalets are all on private land; lifts are of equal capacity. The restaurant is on the National Forest, as are parts of each lift. Slope distance measurements are 3,900 feet on National Forest and 5,100 feet on private land. The chalet has no direct bearing on sales generated by the ski hill because sufficient housing is available nearby, and this development is not essential in providing skiing to the general public.



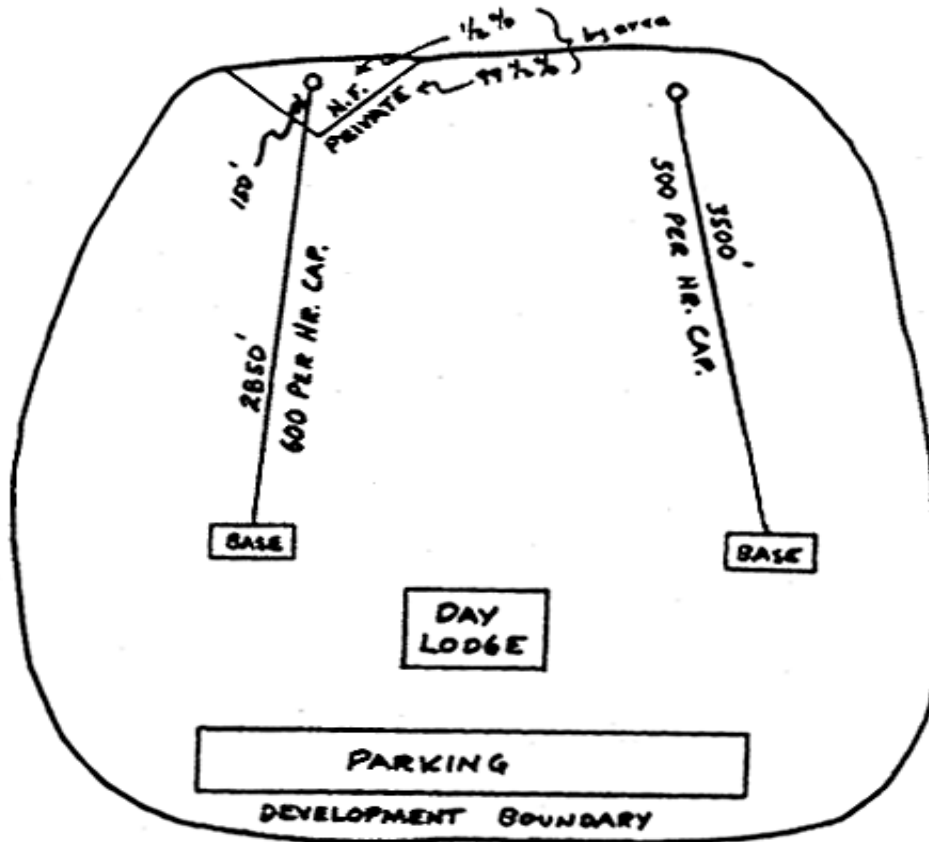
Solution. None of the chalet cost, or its sales, enter the fee calculation. GFA and the sales of the lifts, day lodge, restaurant, and parking lot are prorated on the basis of ownership determined using the slope transport feet method.

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



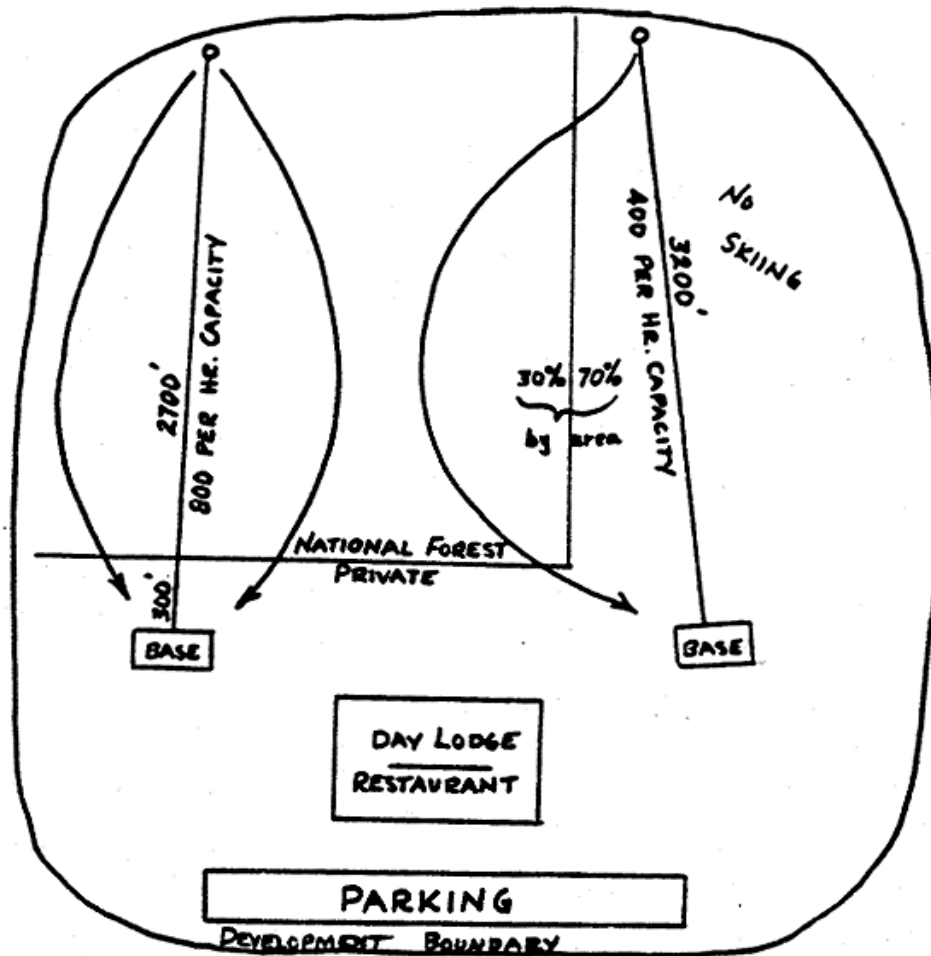
Solution. For GFA and sales, everything except lodge complex and 30 percent of one parking lot qualifies for fee calculations.

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



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

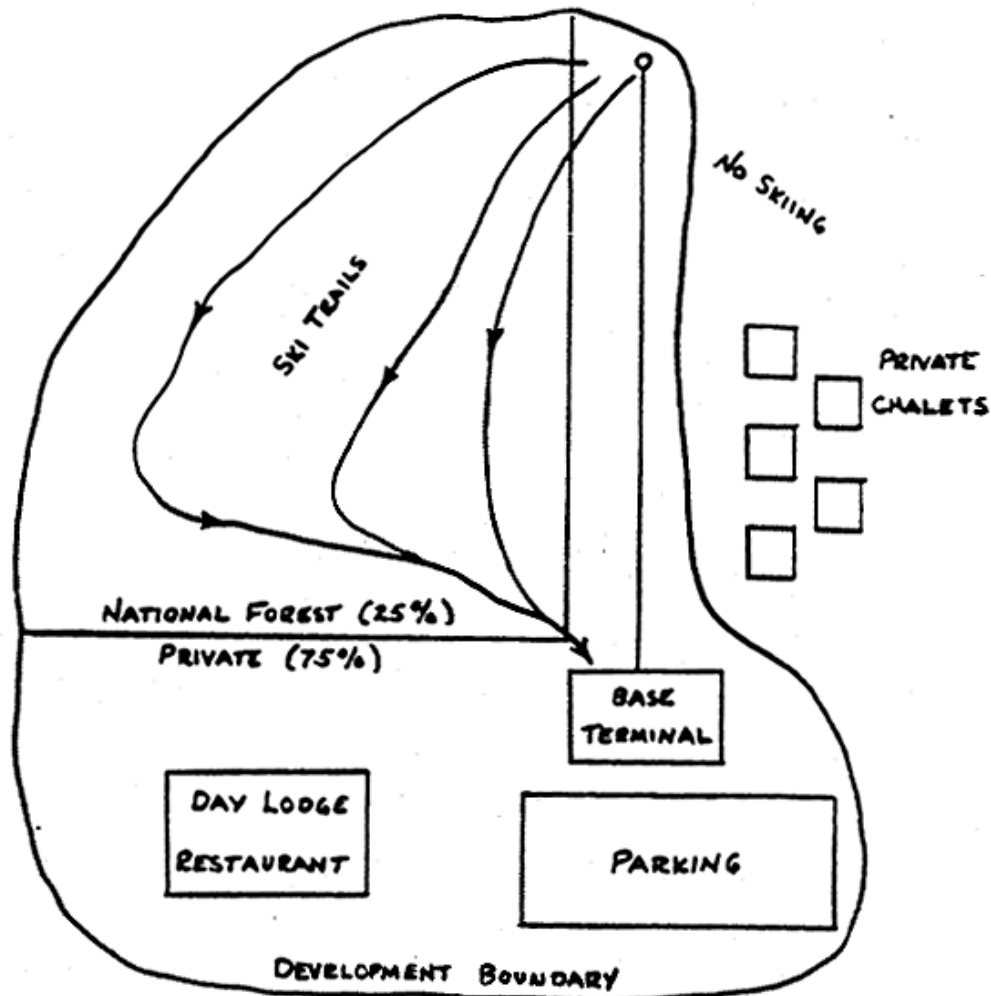
(8) Situation. Three hundred out of 3,000 feet of an 800-per-hour-capacity lift and all 3,200 feet of a 400-per-hour-capacity lift are on private land. The base terminal, which includes restaurant and ski shop, and parking lot are all on private land. Essentially all of the skiing is on National Forest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



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

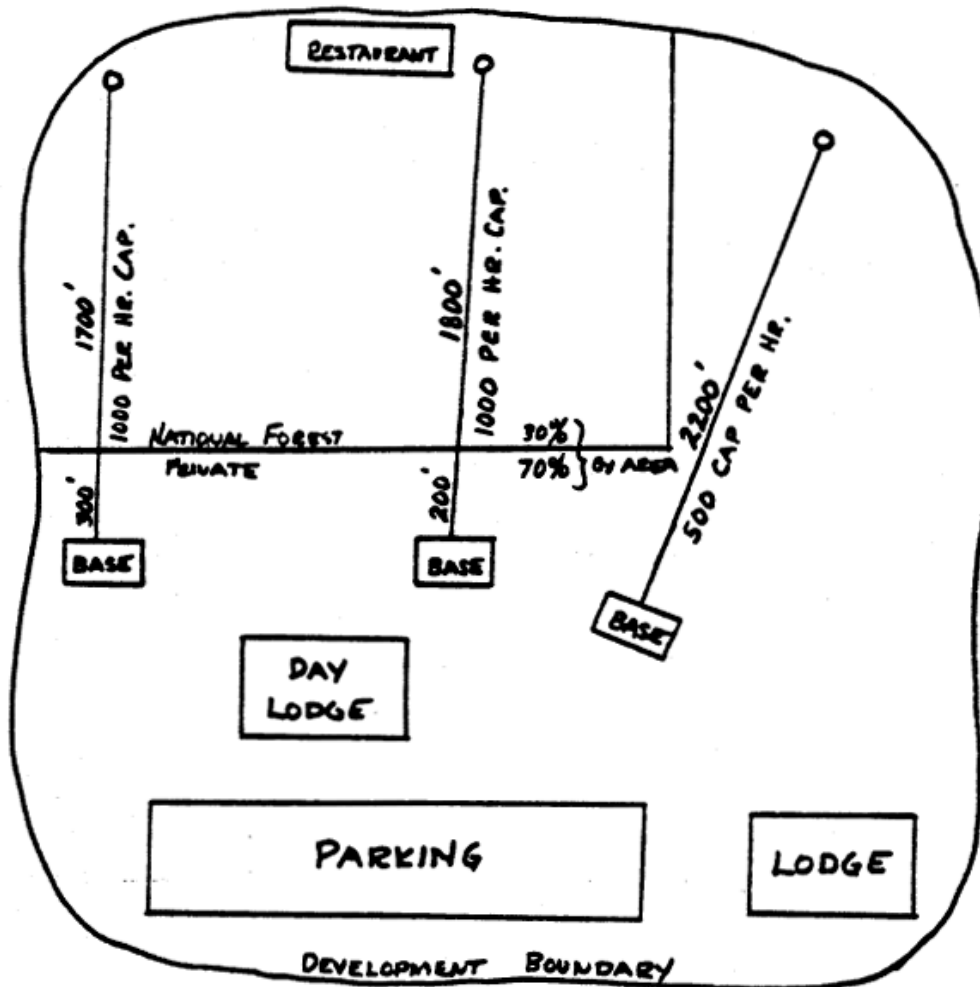


(9) Situation. All land of essentially the same fair market value. All improvements are on private land, but the skiing is on the National Forest. Chalet area is not under permittee control.



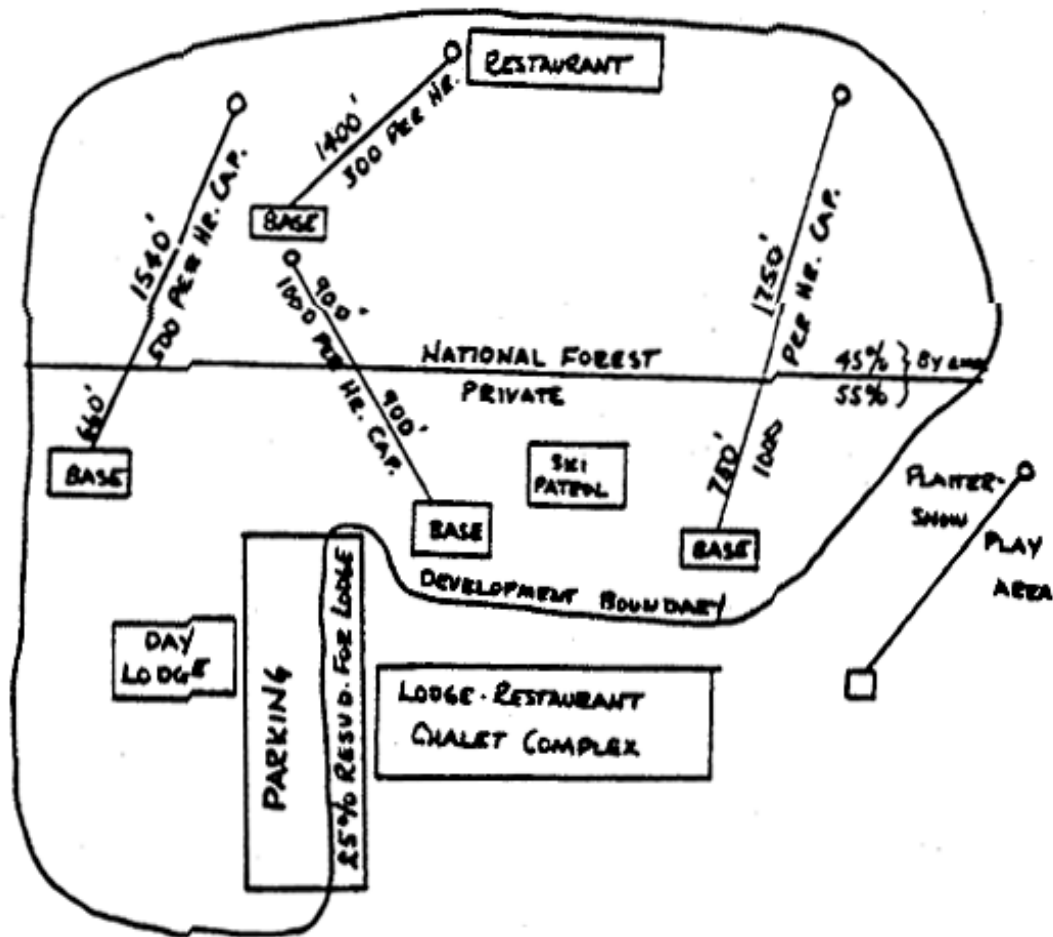
Solution. The approach is to prorate everything within the development boundary on the basis of the public land to the private land, percentage wise by area; that is, 25 percent and 75 percent.

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



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

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



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Situation. Snowplay area is not essential to joint operation nor is lodge, restaurant-chalet complex, or a proportionate share of parking. These are excluded from the development are. Sales and GFA from the other facilities are prorated, based on the

percentages derived from the slope transport feet method. In this case, the operation is 66 percent attributed to National Forest land.

31 ESTABLISHING FEES (FSH 2709.11) (September 17, 2008)

31.03 Policy

31.1 Methods for Determining Fair Market Value

[31.03 - Policy]

Review fees periodically and adjust them when appropriate, in accordance with the terms and conditions of the authorization or as established in the fee schedule or system.

31.1 - Methods for Determining Fair Market Value

[]

3. Fee System and Schedule. (Sec. 36). Use the appropriate fee schedule or fee system to establish fees for the following uses of National Forest System lands. In some situations, appraisal, competitive bid, or negotiated fee may more accurately reflect fair market value than established fee schedules and should be used to establish fees. Refer to each specific schedule or system for further direction as follows:

[]

b. Concessionaire/Ski Areas (GRFS) - FSM 2715.11.

[]

h. Ski Area - section 38.

[]

36 FEE SYSTEMS AND SCHEDULES (FSH 2709.11) (September 17, 2008)

[]

36.1 Fee Based on Sales (Graduated Rate Fee System)

[]

36.1 - Fee Based on Sales (Graduated Rate Fee System)

See FSM 2715.11 for direction on the graduated rate fee system (GRFS), which is used to determine fees for concessions, such as ski areas.

[]

38 SKI AREA PERMIT FEES (FSH 2709.11) (September 17, 2008)

- 38.01 Authority
- 38.02 Objectives
- 38.03 Policy
- 38.03a Ski Area Permits Subject to Fee System Established by 16 U.S.C. 497c
- 38.03b Ski Area Permits Subject to Graduated Rate Fee System or Alternate Fee System
- 38.04 Responsibility
 - 38.04a Director of Recreation and Heritage Resources, Washington Office
 - 38.04b Director of Financial and Accounting Operations, Washington Office
 - 38.04c Directors of Financial Management, Regional Offices
 - 38.04d Authorized Officer
- 38.05 Definitions
 - 38.1 Permits Subject to Ski Area Permit Fee System
 - 38.11 Fee Proration for Mixed Land Ownership
 - 38.12 Fee Calculation (only until Dec. 31, 2015)
 - 38.13 Permit Fee if There is No Adjusted Gross Revenue
 - 38.2 Payments
 - 38.21 Advance Payments
 - 38.22 Interim Payments
 - 38.23 Final Payments
 - 38.3 Permits Subject to Fee Systems Other Than System Established by 16 U.S.C. 497c
 - 38.4 Transition From Prior Permit Fee Systems
 - 38.41 Permit Fee Floor
 - 38.42 Permit Fee Phase-In
 - 38.43 Applicability of Ski Area Permit Fee System Provisions Established by 16 U.S.C. 497c During Transition From Previous Permit Fee Systems to Permit Fee System Established by 16 U.S.C. 497c
 - 38.43a Permits Version issued on Under National Forest Ski Area Permit Act of 1986 on or Before June 1, 1996
 - 38.43b Permits Version issued on Under National Forest Ski Area Permit Act of 1986 After June 1, 1996
 - 38.43c Permits Version issued on Under Organic Act of 1897 and Term Permit Act of 1915

For related direction, see FSM 2701.1.

38.02 - Objectives

The objectives of the permit fee system for ski areas operating on National Forest System lands are:

1. To ensure that the permit fee remains equitable to both the United States and ski area permit holders.
2. To ensure that the permit fee system is economical and simple to administer for both the permit holders and the Forest Service.

38.03 - Policy

38.03a - Ski Area Permits Subject to Fee System Established by 16 U.S.C. 497c

Use the fee system established by 16 U.S.C. 497c to calculate permit fees for ski areas authorized by the National Forest Ski Area Permit Act of 1986 (Ski Area Permit Act) and for those ski areas authorized by the Organic Act of 1897 and the Term Permit Act of 1915 that have elected the permit fee system established by 16 U.S.C. 497c. For ski areas authorized by the Ski Area Permit Act, follow the direction in section 38.43a and section 38.43b to convert permits to the permit fee system in 16 U.S.C. 497c. For ski areas authorized by other authorities, follow the direction in section 38.43c to convert permits to the permit fee system established by 16 U.S.C. 497c.

38.03b - Ski Area Permits Subject to Graduated Rate Fee System or Alternate Fee System

Until a new permit is issued under the Ski Area Permit Act, continue to administer under their current fee system those ski areas whose permits were issued under authorities other than the Ski Area Permit Act and which have not elected the permit fee system established by 16 U.S.C. 497c (FSM 2715.1).

38.04 - Responsibility

38.04a - Director of Recreation and Heritage Resources, Washington Office

It is the responsibility of the Director of Recreation and Heritage Resources, Washington Office to adjust annually the gross revenue figures for each revenue bracket by the Consumer Price Index for the preceding calendar year (sec. 38.12) and to analyze every five years, beginning in 1999, whether permit fees paid under 16 U.S.C. 497c are returning fair market value for the use of National Forest System lands under ski area permits.

38.04b - Director of Financial and Accounting Operations, Washington Office

It is the responsibility of the Director of Financial and Accounting Operations, Washington Office to compile national permit fee information annually and to provide overall management and oversight on audits of the fee system (FSH 1409.15, Auditing Concessions Handbook) to be used in administration of the permit fee system established by 16 U.S.C. 497c.

38.04c - Directors of Financial Management, Regional Offices

It is the responsibility of the Regional Directors of Financial Management or equivalent officials to submit regionally compiled permit fee information to the Washington Office on an annual basis.

38.04d - Authorized Officer

It is the responsibility of the authorized officer (36 CFR 251.51) to:

1. Notify the permit holder of the ski area permit fee system and related requirements established by 16 U.S.C. 497c and, as applicable, of the holder's option to elect the permit fee system established by 16 U.S.C. 497c.
2. Modify special use permits issued under the Ski Area Permit Act to incorporate provisions of the ski area permit fee system established by 16 U.S.C. 497c, and provide permit fee information on Form FS-2700-19a, USDA Forest Service Fee Calculation for Ski Area Permits, to the permit holder.
3. Notify holders of annual adjustments to the gross revenue figures for each revenue bracket by the Consumer Price Index for the preceding calendar year (sec. 38.12).
4. Require the holder, through provisions in the permit, to calculate and make estimated fee payments, and ensure that the holder calculates and pays permit fees in accordance with the terms of the permit.
5. Ensure that the holder submits financial documents, including annually completed permit fee information on Form FS-2700-19a, that support fee calculations in accordance with the terms of the permit.
6. Submit permit fee information to the regional director responsible for financial management on an annual basis.

38.05 - Definitions

The following terms and acronyms are used in the fee calculations set out in section 38.12.

Adjusted Gross Revenue - AGR. Revenue used in the permit fee calculation, which includes revenue from sales of year-round alpine and nordic ski area passes and tickets and revenue from alpine and nordic ski school operations associated with the use of National Forest System lands; gross year-round revenue from ancillary facilities located on National Forest System lands; the value of bartered goods; and the value of complimentary lift tickets.

Bartered Goods and Complimentary Lift Tickets. Goods, services, or privileges that are not available to the general public (except for employee gratuities, employee lift tickets, and discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) and that are donated or provided without charge in exchange for something of value to organizations or individuals (for example, ski area product discounts, service discounts, or lift tickets that are provided free of charge in exchange for advertising).

Discriminatory Pricing. Rates based solely on race, color, religion, sex, national origin, age, disability, or place of residence.

Gross Revenue from Ancillary Facilities - GRAF. Gross revenue from year-round sales derived from temporary and permanent ancillary facilities located on National Forest System lands, including all holder and subholder lodging, food service, rental shops, and other ancillary operations.

Lift Tickets and Passes - LT. Revenue from sales of alpine and nordic lift tickets and passes purchased for the purpose of using a ski area during any time of the year.

Market Price. The price generally available to an informed public, excluding special promotions.

Ski Area Permit Fee - SAPF. Ski area permit fee for use of National Forest System lands.

Ski School Operations - SS. Revenue from lessons provided to teach alpine or nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing.

Slope Transport Feet Percentage - STFP. The method used to prorate revenue from the sale of alpine ski area passes and lift tickets and revenue from alpine ski school operations between National Forest System lands and private land in the ski area.

38.1 - Permits Subject to Ski Area Permit Fee System

Under the ski area permit fee system established by 16 U.S.C. 497c, calculate the permit fee based on adjusted gross revenue associated with the ski area under permit.

38.11 - Fee Proration for Mixed Land Ownership

Under no circumstances shall holder or subholder revenue (except those revenues from sales of lift tickets and passes and from ski school operations) obtained from operations located on private land be included in the permit fee calculation.

1. Prorate revenue derived from the ski area according to the percentage of use between National Forest System lands and private land in the ski area (for example, use

the STFP for alpine revenue or the nordic trail length percentage for nordic revenue; sec. 38.12, para. 5).

2. Prorate revenue from ancillary facilities before it is included in the permit fee calculation, since GRAF is gross revenue from ancillary facilities located on National Forest System lands.
3. Include in the fee calculation and prorate accordingly all revenue from the sale of alpine and nordic ski area tickets and passes and all revenue from alpine and nordic ski school operations, even such revenue that is generated on private land (such as from tickets sold on private land).

38.12 - Fee Calculation

(See sec. 38.05 for definitions of acronyms and terms used in this section.) Use the following formula to calculate the ski area permit fee in accordance with 16 U.S.C. 497c:

$$\text{SAPF} = (.015 \times \text{AGR in bracket 1}) + (.025 \times \text{AGR in bracket 2}) + (.0275 \times \text{AGR in bracket 3}) + (.04 \times \text{AGR in bracket 4})$$

Where:

$$\text{AGR} = (\text{LT} + \text{SS}) \times (\text{proration \%}) + \text{GRAF}$$

1. SAPF is the ski area permit fee established by 16 U.S.C. 497c for use of National Forest System lands.
 - a. Calculate SAPF by summing the results of multiplying the indicated percentage rates by the amount of the holder's adjusted gross revenue (AGR), which falls into each of the four brackets.
 - b. Follow direction in the following paragraph 2 to determine AGR.
 - c. Calculate the permit fee based on the holder's fiscal year, unless otherwise mutually agreed by the holder and the authorized officer.
 - d. Use the revenue brackets as indexed for the previous calendar year. The Director of Recreation and Heritage Resources, Washington Office, annually adjusts the four revenue brackets by the Consumer Price Index (CPI). (The Director of Lands, Washington Office, issues the updated CPI annually in sec. 36.21). Regardless of when the holder's fiscal year begins or ends, do not split the holder's AGR for any fiscal year into more than one set of indexed brackets. For example, apply the brackets as adjusted by the calendar year 1996 CPI to the holder's fiscal year 1997

permit fee calculation. Only the levels of AGR defined in each bracket are updated annually. The percentage rates do not change.

e. To calculate permit fees for fiscal years 1996 through 1999, and for 2000 and beyond, use the revenue brackets and percentages displayed in exhibit 01 as shown in the preceding formulas in this section.

2. AGR is the adjusted gross revenue used in the permit fee calculation.

a. Include as revenue: income from sales of alpine and nordic tickets and ski area passes; alpine and nordic ski school operations; gross revenue from ancillary facilities; the value of bartered goods and complimentary lift tickets (such as lift tickets provided free of charge to the holder's friends or relatives); and special event revenue. Discriminatory pricing is not allowed, but if it occurs, include the amount that would have been received had the discriminatory pricing transaction been made at the market price.

b. Exclude from revenue: income from sales of operating equipment; refunds; rent paid to the holder by subholders; sponsor contributions to special events; any amount attributable to employee gratuities or employee lift tickets; discounts; ski area tickets or passes provided for a public safety or public service purpose (such as for National Ski Patrol or for volunteers to assist on the slope in the Special Olympics); and other goods or services (except for bartered goods and complimentary lift tickets) for which the holder does not receive money.

c. Calculate AGR by summing the revenue from lift tickets and ski school operations prorated for use of National Forest System lands and from ancillary facility operations conducted on National Forest System lands.

d. Include the following in AGR:

(1) Revenue from sales of year-round alpine and nordic ski area passes and tickets and revenue from alpine and nordic ski school operations prorated according to the percentage of use between National Forest System lands and private land in the ski area;

(2) Gross year-round revenue from ancillary facilities located on National Forest System lands;

(3) The value of bartered goods and complimentary lift tickets. Include the market price value of bartered goods and complimentary lift tickets (except for employee gratuities, employee lift tickets, and discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) in the AGR formula as

revenue under LT, SS, or GRAF, depending on the type of goods, services, or privileges donated or bartered; and

(4) Special event revenue from events such as food festivals, foot races, and concerts. Include special event revenue in the AGR formula as revenue under LT, SS, or GRAF, as applicable. Prorate revenue according to the percentage of use between National Forest System lands and private land as described in section 38.11 and as indicated in the following paragraphs 5 and 6.

3. LT is the revenue from sales of alpine and nordic lift tickets and passes purchased for the purpose of using a ski area during any time of the year.

4. SS is the revenue from lessons provided to teach alpine or nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing.

5. Proration % is the method used to prorate revenue from the sale of ski area passes and lift tickets and revenue from ski school operations between National Forest System lands and private land in the ski area. Separately prorate alpine and nordic revenue with an appropriate proration factor. Add prorated revenues together; then sum them with GRAF to arrive at AGR.

Use one or both of the following methods, as appropriate:

a. STFP is the method used to prorate alpine revenue. Follow the direction for STFP contained in FSM 2715.11c. Include in the calculation only uphill devices (lifts, tows, and tramways) that are fundamental to the winter sports operation (usually those located on both Federal and private land). Do not include people movers whose primary purpose is to shuttle people between parking areas or between parking areas and lodges and offices.

b. Nordic trail length is the method used to prorate nordic revenue. Use the percentage of trail length on National Forest System lands to total trail length. To calculate the percentage, divide the length of nordic trails on National Forest System lands by the total length of ski area nordic trails.

6. GRAF is the revenue from ancillary facilities, including all of the holder's or subholder's lodging, food service, rental shops, parking, and other ancillary operations located on National Forest System lands. For facilities that are partially located on National Forest System lands, calculate the ratio of the facility square footage located on National Forest System lands to the total facility square footage. Prorate special event revenue allocatable to GRAF pursuant to paragraphs 2d (2) through 2d (4) of this section by the ratio of the use on National Forest System lands to the total use.

38.12 - Exhibit 01

Adjusted Gross Revenue (AGR) Brackets and Associated Percentage Rates for Use in Determining Ski Area Permit Fee (SAPF)

Revenue Brackets (updated annually by CPI*) and Percentage Rates				
Holder FY	Bracket 1 (1.5%)	Bracket 2 (2.5%)	Bracket 3 (2.75%)	Bracket 4 (4%)
FY 1996 CPI: N/A	All revenue below \$3,000,000	\$3,000,000 to <\$15,000,000	\$15,000,000 to \$50,000,000	All revenue over \$50,000,000
FY 1997 CPI: 1.030	All revenue below \$3,090,000	\$3,090,000 to <\$15,450,000	\$15,450,000 to \$51,500,000	All revenue over \$51,500,000
FY 1998 CPI: 1.022	All revenue below \$3,158,000	\$3,158,000 to <\$15,790,000	\$15,790,000 to \$52,633,000	All revenue over \$52,633,000
FY 1999 CPI: 1.017	All revenue below \$3,212,000	\$3,212,000 to <\$16,058,000	\$16,058,000 to \$53,528,000	All revenue over \$53,528,000
FY 2000 CPI: 1.021	All revenue below \$3,279,000	\$3,279,000 to <\$16,395,000	\$16,395,000 to \$54,652,000	All revenue over \$54,652,000
FY 2001 CPI: 1.035	All revenue below \$3,394,000	\$3,394,000 to <\$16,969,000	\$16,969,000 to \$56,565,000	All revenue over \$56,565,000

38.12 - Exhibit 01--Continued

Holder FY	Bracket 1 (1.5%)	Bracket 2 (2.5%)	Bracket 3 (2.75%)	Bracket 4 (4%)
FY 2002 CPI: 1.028	All revenue below \$3,489,000	\$3,489,000 to <\$17,444,000	\$17,444,000 to \$58,149,000	All revenue over \$58,149,000
FY 2003 CPI: 1.015	All revenue below \$3,541,000	\$3,541,000 to <\$17,706,000	\$17,706,000 to \$59,021,000	All revenue over \$59,021,000
FY 2004 CPI: 1.021	All revenue below \$3,615,000	\$3,615,000 to <\$18,078,000	\$18,078,000 to \$60,260,000	All revenue over \$60,260,000
FY 2005 CPI: 1.030	All revenue below \$3,723,000	\$3,723,000 to <\$18,620,000	\$18,620,000 to \$62,068,000	All revenue over \$62,068,000
FY 2006 CPI: 1.032	All revenue below \$3,842,000	\$3,842,000 to <\$19,216,000	\$19,216,000 to \$64,054,000	All revenue over \$64,054, 000

*The Director of Recreation, Heritage, and Wilderness Resources, Washington Office, updates the revenue brackets annually, based on the Consumer Price Index, (CPI-U), Table A which is published monthly at <http://www.bls.gov>. The CPI is revised and issued annually in section 97.

The bracket update is accomplished by using the change in the CPI-U for "All Urban Consumers" index for the month of July and is based on the percentage increase or decrease for the preceding calendar year. This index base period is 1982-84=100. For example, the 2002 adjustment uses the change between July 2000 and July 2001.

38.13 - Permit Fee if There is No Adjusted Gross Revenue

In cases when a ski area permit holder has no adjusted gross revenue (AGR) for a given fiscal year, charge the holder a permit fee of \$2 per acre for National Forest System lands under permit or a percentage of the appraised value of National Forest System lands under permit (sec. 31.1), at the discretion of the authorized officer.

When there is minimal use of National Forest System lands under permit, especially when prorated revenues from alpine and nordic uses are zero, authorized officers should consider whether to issue such ski area permits under an authority other than the Ski Area Permit Act.

38.2 - Payments

1. In accordance with the terms of the permit, holders are required to:
 - a. Calculate and submit advance, interim, and final payments;
 - b. Submit financial documents that support fee calculations; and
 - c. Submit permit fee information on Form FS-2700-19a annually to the authorized officer.
2. When the permit fee is expected to exceed \$10,000 per year, the permit shall require monthly payments. If the permit fee is expected to be \$10,000 or less, quarterly payments are required during months of operation.
3. Holders submit payments without billing by the Forest Service. Holders that fail to make payments in accordance with the terms of the permit are in violation of the permit and the authorized officer shall so notify them. Assess late payment charges, including interest, penalties, and administrative costs, in accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701-3719) when the required payment is not made on time (FSH 6509.11h, Service-Wide Claim Management Handbook, ch. 20).

38.21 - Advance Payments

Holders are required to make advance payments due by the beginning of the holder's fiscal year or by another payment cycle in accordance with the permit. Credit the advance payment toward the total ski area permit fee due at the end of the payment cycle, in accordance with the permit.

1. Base the advance payment on 20 percent of the holder's average fee for 3 previous operating years when applicable.
2. Base the advance payment for new holders of an existing ski area permit on 20 percent of the prior holder's average fee.
3. For new areas:
 - a. Establish the advance payment for new areas as 20 percent of the permit fee, based on projected AGR, or

b. For ski areas not expected to generate AGR for a given fiscal year, require advance payment of the permit fee as calculated according to the procedures in section 38.13 (\$2 per acre or a percentage of the appraised value of the National Forest System land under permit). If the ski area reports AGR for that fiscal year, credit the permit fee paid under provisions of section 38.13 toward the permit fee calculated according to the ski area permit fee formula in section 38.12.

38.22 - Interim Payments

To keep permit fees current with use, require interim payments. Credit interim payments toward the total ski area permit fee due at the end of the payment cycle, in accordance with the permit. Base interim payments on a tentative percentage rate and monthly or quarterly sales. Interim payments are due 30 days after the end of each month, if payments are made monthly; or 30 days after the end of each holder's fiscal year quarter, if payments are made quarterly.

38.23 - Final Payments

Reconcile payments made in the current payment cycle against the total ski area permit fee due at the end of the payment cycle, in accordance with the permit. The final payment is due 90 days after the close of the holder's fiscal year, or under another payment cycle in accordance with the permit. The holder is required to submit final payments with supporting financial documents, including permit fee information on Form FS-2700-19a, as provided in the permit.

38.3 - Permits Subject to Fee Systems Other Than System Established by 16 U.S.C. 497c

For ski areas authorized by the Organic Act of 1897 and Term Permit Act of 1915 that do not elect the ski area permit fee system established by 16 U.S.C. 497c, continue to assess fees in the manner prescribed in the existing permit. When a new permit is issued under the Ski Area Permit Act or if the holder elects the permit fee established by 16 U.S.C. 497c, calculate the permit fee as set forth in section 38.12 or 38.13.

38.4 - Transition From Prior Permit Fee Systems

The ski area permit fee system established by 16 U.S.C. 497c is effective as of June 1, 1996, and covers receipts retroactively to June 1, 1995. The authorized officer shall determine revenues attributable to the graduated rate fee system (GRFS) for the holder's fiscal year 1996 that began prior to June 1, 1995. Any permit fees prepaid under GRFS for any holder's fiscal year in which the ski area permit fee system established by 16 U.S.C. 497c is in effect shall be reconciled by the authorized officer against the permit fee calculated under the latter system. For the purpose of implementing 16 U.S.C. 497c, do not require a change in the holder's fiscal year or payment schedule.

38.41 - Permit Fee Floor

The purpose of the permit fee floor is to ensure increasing permit fees to the United States during the transition from the graduated rate fee system to the ski area permit fee system established by 16 U.S.C. 497c.

1. The permit fees due for the holder's fiscal years 1996, 1997, and 1998 are, respectively:
 - a. Either the permit fee paid in the base year (fiscal year 1995) or the permit fee calculated under sections 38.12 or 38.13, and 38.42, whichever is higher for the holder's fiscal year 1996;
 - b. Either the permit fee paid for the base year (fiscal year 1995) or the permit fee calculated under sections 38.12 or 38.13, and 38.42, whichever is higher for the holder's fiscal year 1997; or
 - c. Either the permit fee paid for the base year (fiscal year 1995) or the permit fee calculated under sections 38.12 or 38.13, and 38.42, whichever is higher for the holder's fiscal year 1998;
2. Except that if a holder's AGR for fiscal years 1996, 1997, or 1998 falls more than 10 percent below the AGR for the base year (fiscal year 1995), the permit fee paid shall be the permit fee calculated under section 38.12 or 38.13. Compare the holder's AGR for the base year, as computed under section 38.12 or 38.13, against the holder's AGR for the transition years.

38.42 - Permit Fee Phase-In

The fee system established by 16 U.S.C. 497c provides for a phase-in of fees during the first five years the system is in effect when the permit fee calculated according to direction in section 38.12 or 38.13 for the holder's fiscal year 1996 results in an increase in the permit fee greater than 0.5 of one percent of the holder's AGR. In such cases, the increase in fees above the base year is phased in over a 5-year period. By the holder's fiscal year 2001, calculate all permit fees under section 38.12 or 38.13. For fiscal years 1996 through 2000, phase in that portion of the permit fee that exceeds the base fee (the fee paid in fiscal year 1995), beginning with the holder's fiscal year 1996. If the phase-in applies, calculate the permit fee according to the fee schedule in exhibit 01.

1. The FY 1995 fee is the permit fee paid in the holder's fiscal year 1995 (usually under GRFS).

2. The FY 1996 fee is the permit fee calculated under section 38.12 or 38.13 that would be due if phase-in were not applicable, and so on for the FY 1997-2000 fees.
3. During fiscal years 1997 and 1998, if there is no increase in the permit fee calculated under the fee formula in section 38.12 or 38.13 over the base fee (fiscal year 1995), establish the permit fee paid as the permit fee paid for fiscal year 1995. However, if a holder's AGR for fiscal years 1997 or 1998 falls more than 10 percent below the AGR for the base year (fiscal year 1995), the permit fee paid shall be the permit fee calculated under section 38.12 or 38.13. Compare the holder's AGR for the base year, as computed under section 38.12 or 38.13, against the holder's AGR for the transition years.
4. During fiscal years 1999 and 2000, if there is no increase in the permit fee calculated under the fee formula in section 38.12 or 38.13 over the base fee (fiscal year 1995), establish the permit fee paid as the fee calculated under section 38.12 or 38.13.

38.42 - Exhibit 01

5-Year Phase-In of Ski Area Permit Fee Under 16 U.S.C. 497c

1. 1996 Permit Fee = FY 1995 fee + .2 x (FY 1996 fee - FY 1995 fee)
2. 1997 Permit Fee = FY 1995 fee + .4 x (FY 1997 fee - FY 1995 fee)
3. 1998 Permit Fee = FY 1995 fee + .6 x (FY 1998 fee - FY 1995 fee)
4. 1999 Permit Fee = FY 1995 fee + .8 x (FY 1999 fee - FY 1995 fee)
5. 2000 Permit Fee = FY 1995 fee + 1.0 x (FY 2000 fee - FY 1995 fee)

38.43 - Applicability of Ski Area Permit Fee System Provisions Established by 16 U.S.C. 497c During Transition From Previous Permit Fee Systems to Permit Fee System Established by 16 U.S.C. 497c

Follow direction set out in sections 38.43a through 38.43c when applying transition provisions (sec. 38.4 through 38.42) of the ski area permit fee system established by 16 U.S.C. 497c.

38.43a - Permits Issued Under National Forest Ski Area Permit Act of 1986 on or Before June 1, 1996

Ski areas authorized under the Ski Area Permit Act of 1986 on or before June 1, 1996 are subject to the fee system established by 16 U.S.C. 497c. Amend the holder's permit by replacing the fee provisions in clause VI of the permit with the clause that implements the fee system in section 38.12. See chapter 50 for the appropriate clause. Apply transition provisions (sec. 38.4 through 38.42) of 16 U.S.C. 497c.

38.43b - Permits Issued Under National Forest Ski Area Permit Act of 1986 After June 1, 1996

Ski areas authorized under the Ski Area Permit Act of 1986 after June 1, 1996 are subject to the fee system established by 16 U.S.C. 497c. Amend the holder's permit by replacing the fee provisions in clause VI of the permit with the clause that implements the fee system in section 38.12. See chapter 50 for the appropriate clause.

1. When a permit is issued to the existing holder upon expiration of the current permit, or to the existing holder of a permit converted from a permit issued under the Organic Act of 1897 or the Term Permit Act of 1915, the following direction applies:
 - a. Holders of permits may elect the transition provisions on or before May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2). The permit fee system established by 16 U.S.C. 497c would apply retroactively to these permits. Apply transition provisions (sec. 38.4 through 38.42).
 - b. For holders that do not elect the transition provisions on or before May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2), the permit fee system established by 16 U.S.C. 497c would apply from the date the permit is issued. The phase-in or other transition provisions are not available to these holders. The permit fee system (sec. 38.12) is effective on the date of permit issuance. Do not apply transition provisions (sec. 38.4 through 38.42.)
 - c. Permits that are issued after May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2) are not subject to the transition provisions for the permit fee system. The phase-in or other transition provisions are not available to these holders. The permit fee system (sec. 38.12) is effective on the date of permit issuance. Do not apply transition provisions (sec. 38.4 through 38.42.)
2. When a permit is issued to a new owner of improvements at an existing ski area or to an owner of improvements at a new ski area, the phase-in or other transition provisions are not available to these holders. The permit fee system (sec. 38.12) is effective on the date of permit issuance. Do not apply transition provisions (sec. 38.4 through 38.42.)

38.43c - Permits Issued Under Organic Act of 1897 and Term Permit Act of 1915

Ski areas authorized under the Organic Act of 1897 or the Term Permit Act of 1915 may elect the permit fee system established by 16 U.S.C. 497c. Amend such permits by replacing the fee provisions in clause VI of the permit with the clause that implements the fee system in section 38.12. See chapter 50 for the appropriate clause.

1. Holders of permits that elect the permit fee system established by 16 U.S.C. 497c on or before May 27, 1999 (90 days following the effective date of the ski area permit fee

system directive issued in Amendment 2709.11-99-2), are subject to the transition provisions for the permit fee system (sec. 38.4 through 38.42).

2. Holders that elect the permit fee system established by 16 U.S.C. 497c after May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2), are subject to the permit fee system established by 16 U.S.C. 497c in the holder's fiscal year following amendment of the permit to reflect coverage under this permit fee system (sec. 38.12). The phase-in or other transition provisions are not available to these holders.

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AUDITING CONCESSIONS HANDBOOK (FSH 1409.15)(June 1977)

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12 - FORMS AND WORKSHEETS

Exhibit 01 presents examples of worksheets that may be used in the administration and audit of commercial special-use permits. Each worksheet has its valid use to the auditor. For example, the summary of collections worksheet will reflect whether and-rental-fee payments are current. The audit summary work worksheet summarizes differences between the concessioner's sales report and his accounting records. The verification of gasoline tax and State sales tax returns worksheets have a dual use. They will reflect whether the correct deductions of taxes paid were taken by the concessioner, as well as whether or not the proper amounts of sales for which these taxes were imposed were reported.



12 - Exhibit 01

PERMITTEE <u>XYZ Ski Resort</u> SUMMARY OF COLLECTION Worksheet PERIOD COVERED 11/1/73 - 10/31/77				
DATE PERMIT ISSUED 6-14-58		MINIMUM FEE \$1,550.00	PERCENTAGE GRFS	
BILL NIMBER	DESCRIPTION	DATE ISSUED	DATE PAID	AMOUNT
13-137	Minimum Fee	11/1/73	12/7/73	\$1,550.00
13-119	Operations 11/21/73 - 11/31/74	2/25/74	3/30/74	\$4,261.00
13-516	Operations 2/1/74 - 3/31/74	4/24/74	5/20/74	\$5,677.00
13-731	Operations 4/1/74 - 5/17/74	6/3/74	6/29/74	\$4,938.00
13-118	Minimum Fee	11/1/74	12/2/74	\$1,550.00
13-300	Operations 11/29/74 - 1/31/75	2/20/75	3/8/75	\$3,875.00
13-493	Operations 2/1/75 - 3/31/75	4/22/75	5/17/75	\$4,917.00
13-682	Operations 4/1/75 - 5/26/75	6/12/75	7/1/75	\$5,212.00
SUMMARY	FY 1974	\$	<u>16,426.00</u>	
	FY 1975	\$	<u>15,554.00</u>	
	FY 1976	\$	_____	
	FY 1977	\$	_____	



12 - Exhibit 01--Continued

USDA - FOREST SERVICE FEE CALCULATIONS FOR CONCESSION PERMIT'S			A. PERMITTEE (Name and address): XYZ Ski Resort Anywhere, USA			B. LUR IDENTITY CODE Z 0 -----		
C. PERIOD: 11/1/76 - 10/31/77			D. FEE CALCULATION SALES: \$870,00			E. GROSS FIXED ASSETS (GFA): \$1,000,000		

SOURCE OF SALES	SALES FOR FEE CALCULATION		BREAK-EVEN POINT (SALES TO GFA)		RATE BASE		BALANCE OF SALES RATE	
	AMOUNTS	%	%		%		%	
	I	II	III	IV	V	VI	VII	VIII
Service Food	\$174,000	20	70	1400	1.25	2500	1.50	3000
Service Rooms	\$130,000	15	40	1400	4.00	6000	5.30	7950
Rentals	43,500	5	30	150	4.50	2250	5.95	2975
Lifts, Tows & Ski School	522,000	60	20	1200	2.00	12000	5.00	30000
TOTAL	\$ 870,000	100		3350		22750		43925

ITEMS	RATES	SALES	FEE
1. COMPOSITE BREAK-EVEN POINT	34		
2. COMPOSITE RATE BASE	2.28		
3. COMPUTATION OF BASIC FEE	1.14	\$ 340,000	\$ 3,876.00
a. On sales below break-even			
b. On sales from break-even to twice break-even	3.42	340,000	11,628.00
c. On sales greater than twice break-even	4.39	190,000	8,341.00
4. TOTALS (Sales and Basic Fee)		\$ 870,000	\$ 23,845.00

5. WEIGHTED AVERAGE FEE RATE	2.74		
6. SUBCHARGE (if any) 0.5 _____ = (SUBCHARGE RATE)	\$ 23845.00 x (TOTAL BASIC FEE)		\$ 1,192.25
7. COMMISSIONS AND OTHER INCOME 0.5 _____ = (WEIGHTED AVG. FEE RATE)	\$ _____ x (COMMISSIONS)		\$
8. FRANCHISE PAYMENTS 0.5 _____ = (FRANCHISE RATE)	\$ _____ x (FRANCHISE PAYMENTS)		\$
9. FEE EARNED (G/T payments to be billed separately)----	----- --▶		25,035.25
10. MINIMUM FEE PAID ----- -----	----- --▶		1,550.00
11. TOTAL FEE DUE ----- -----	----- --▶		25,037.25
12. PAYMENT TO DATE including credits - -----	----- --▶		24,550.00
13. BALANCE DUE/CREDIT) ----- --- (Strike Out One)	----- --▶		487.25
PREPARED BY: _____ DATE _____ CHECKED BY: _____ DATE _____			
(See Reverse for Instructions)			
2700-19 (7/71)			

12 - Exhibit 01--Continued**INSTRUCTIONS**

1. Fill out block A-E at top of form.
2. Fill in Sources of Sales, Breakeven Points (column III); Rate Bases (column V), and Balance of Sales Rates (column VII from permit fee clauses.
3. From permittee's report of sales, determine dollar amount of sales for each kind of business and enter in column I.
4. Determine the percentage that the sale for each kind of business is of total sales. Enter these percentages in column II rounded off to the nearest whole percent.
5. Multiply column III by column II and enter the result in column IV without decimals. Show a total for the column at the bottom. Point off four places. This is the composite breakeven point. Round it off to the nearest whole percent, dropping any amount less than 0.5 percent, and enter it on line 1 under Rate.
6. Multiply column V by column II and enter the products in column VI without decimals. Show a total for the column at the bottom. Point off four places. This is the composite rate base. Round it off to the nearest hundredth of a percent and enter it on line 2 under Rate.
7. Enter 50% of line 2 rate on line 3a under Rate and 150% of line 2 rate on line 3b under Rate.
8. Multiply the entry in block E by the percentage on line 1. If the result is greater than the entry in block D, enter the block D amount on line 3a under Sales. If the result is less than block D, enter the result on line 3a under Sales.
9. Subtract entry on line 3a under Sales from total sales block D. If the difference between line 3a entry and block D is equal to or less than line 3a, post the difference to line 3b under Sales. If the difference is greater than line 3a, post an amount equal to 3a entry to line 3b. Post any balance of sales over line 3a and 3b total to line 3c under Sales. Total the result and post on line 4. Line 4 total sales must equal the block D entry.
10. If an entry is made under Sales on line 3c, multiply column VII by column II and enter the result in column VIII without decimals. Show a total for the column at the bottom. Point off four places. This is the composite balance of sales rate. Round it off to the nearest hundredth of a percent and enter it on line 3c under Rate.
11. Multiply line 3a Sales by line 3a Rate and post the result to line 3a, Fee. Follow the same procedure for line 3b and 3c as appropriate. Post basic fee to line 4.
12. Divide line 4 Sales into line 4 Fee and post weighted average fee rate to line 5 under Rate.
13. If surcharge applies, enter basic fee and surcharge percentage on line 6. Multiply and enter surcharge on line 6 under Fee.
14. Post commissions and other income to line 7. Multiply by weighted average fee rate line 5. Post the result on line 7 under Fee.
15. Post franchise payment to line 8, multiply by percentage due the government. Post fee due on line 8 under Fee.
16. Add fees on lines 4, 6, 7, and 8 and post total to line 9 under Fee.
17. Enter minimum fee paid on line 10 under Fee.
18. On line 11, enter from line 9 or 10 whichever is larger.



19. On line 12, enter payments made to date including credit from previous year.
20. On line 13, enter the difference between line 11 and 12 and strike out the inappropriate word.

**12 - Exhibit 01--Continued**

AUDIT SUMMARY		Worksheet	
PERMITTEE <u>XYZ Ski Resort</u>	AUDITOR <u>Phil Larson</u>		
TYPE OF PERMIT _____	DATE OF AUDIT <u>March 3-6, 1977</u>		
CLASSIFICATION _____	PERIOD COVERED <u>11/1/75 - 10/31/76</u>		
CASE DATE _____			
	GROSS RECEIPTS STATEMEN T	PERMITTEE'S ACCOUNTING RECORDS	DIFFERENC E
GROSS RECEIPTS (INCLUDING, TAXES COLLECTED)	796,850	832,714	35,864
LESS: RETURNED MERCH, REFUNDS, ALLOW			
STATE SALES TAXES	11,639	11,639	-----
FEDERAL EXCISE TAXES	977	977	-----
FEDERAL RET. EXCISE TAXES	-----	-----	-----
STATE & FEDERAL GASOLINE TAXES	1,653	1,653	-----
TOTAL DEDUCTIONS	14,269	14,269	-----
GROSS RECEIPTS LESS DEDUCTIONS	782,581	818,445	35,864
OTHER INCOME	1,670	3,314	1,644
TOTAL RECEIPTS SUBJECT TO FEE	784,251	821,759	37,508
FEE RATE GRFS - See Form 2700-19			
AMOUNT OF FEE			
1. WAS THE PERMITTEE PRESENT DURING THE AUDIT?			YES
2. WERE THE GROSS RECEIPTS VERIFIED BY COMPARISON WITH THE PERMITTEE'S PROFIT AND LOSS STATEMENT?			YES
3. WERE THE ACCOUNTING RECORDS AND THE BASIC SUPPORTING DOCUMENTS CONSIDERED ADEQUATE? IF NOT, GIVE REASONS AND MAKE RECOMMENDATIONS.			NO
4. WHAT PORTION OF THE PERMITTEE'S OPERATION IS UNDER SUBLEASE?			
5. WERE THE GROSS RECEIPTS OF THE SUBLESSEE, INCLUDING COIN MACHINES, REPORTED BY?			YES

12 - Exhibit 01--Continued

VERIFICATION OF GASOLINE TAX DEDUCTION WORKSHEET					
Period	Accounting Records		Purchase Invoice	State Sales Tax Returns	Difference
	Gas Sales	Gallons (Meter Reading)	Gallons	Gas Sales	
11/75	\$828.40	1317	1600	\$773.90	\$54.50
12/75	959.10	1520	1600	891.60	67.50
1/76	1324.90	2093	2500	1255.10	69.80
2/76	1340.40	2131	2000	1243.30	97.10
3/76	1552.20	2456	2500	1450.50	101.70
4/76	1141.60	1815	1800	1057.20	84.40
5/76	714.40	1134	1000	643.90	70.50
6/76	297.80	472	300	207.70	90.10
7/76	264.80	419	300	211.00	53.80
8/76	251.10	398	500	143.80	107.30
9/76	384.90	610	500	195.40	189.50
10/76	595.00	943	1000	447.50	147.50
	\$9,654.60	15,008	15,600	\$8,520.90	\$1,133.70
<p>(Deductible State Fuel Tax 7¢ Gal. Federal Fuel Tax 4¢ gallon.)</p> <p>Amount of Tax Deducted on Gross Receipts Statement \$1,651.00</p> <p>Difference \$194.00</p> <p><u>1/</u> Represents gas used by employee for personal and business use off highway.</p> <div> <div> <u>.6433/gal.</u> 15008/ 9,654.60 </div> <div> <u>1762 gal. x .11¢/gallons</u> \$193.82 6433/ 1,133.70 </div> </div>					



12 - Exhibit 01--Continued

	<u>PERIOD COVERED</u>	NON- TAXABLE SALES	NON- TAXABLE 1/ INCLUDING TAXES	TAXABLE SALES	NOT PURCHASED FOR RESALE	SALES TAX PAID
	January	1097.0 0	-----	4638.00	944.00	334.92
	February	751.00	-----	5162.00	1015.00	370.62
1st	March	843.00	-----	5417.00	1291.00	400.48
	April	691.00	-----	4891.00	1126.00	361.02
	May	217.00	-----	3175.00	1004.00	250.74
2nd	June	180.00	-----	1626.00	417.00	122.58
	July	146.00	-----	1437.00	395.00	109.92
	August	172.00	-----	1729.00	473.00	132.12
3rd	September	191.00	-----	1525.00	516.00	122.46



	October	266.00	-----	1819.00	621.00	146.40
	November	392.00	-----	2732.00	734.00	207.76
4th	December	1235.00	-----	3915.00	1157.00	304.32
	Total	6,181.00	-----	38,066.00	9,693.00	2,865.54
<u>1/</u> You would expect this column to be zero unless taxes paid unavailable or incorrectly.			Less tax on items not purchased for resale			581.58
			Less penalties and interest			----- <u>2/</u>
<u>2/</u> Applicable on, believe to pay or late payments.						2,283.96
<u>3/</u> Under deductible by permittee. Auditors should compare taxable and non-taxable sales totals to concessions sales reports to establish whether proper sales totals were reported.			Sales tax deducted on report of net sales			1,837.51
			Difference			----- <u>2/</u>
						446.45 <u>3/</u>

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