# Nez Perce–Clearwater National Forests
# Forest Plan Assessment

# 14.0 Land Status and Ownership, Use and Access Patterns

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# 14. Land Status and Ownership, Use and Access Patterns

## 14.1 EXISTING INFORMATION

### 14.1.1 *Land Status and Ownership*

Landownership is the basic pattern of public and private ownership. Land ownership is defined as the condition of title of land or interest in land under the jurisdiction of the Forest Service. The following conditions are also included under this definition: the manner in which these lands came into federal ownership; encumbrances and restrictions that affect the administration of the land; interest owned by the government in private lands; and the interest in government lands held by others.

As established in 36 CFR 200.12, the Land Status Records System (LSRS) is the official repository for all realty records and land title documents for National Forest System (NFS) lands. The LSRS is maintained at the Regional Office level and is the electronic record for realty information backed up by hardcopy records maintained at the Region and Forest Offices. The LSRS is the system where the assembling and recording of land ownership and related information is made available to field personnel.

The LSRS records include an accurate account of acreage, condition of title, administrative jurisdiction, rights held by the United States, administrative and legal use restrictions, encumbrances, and access rights on land or interests in land in the NFS.

Maintenance of the LSRS includes the final review, processing, posting, and permanent retention of records that create any change in land ownership status. This compilation includes notation and filing of laws and executive orders affecting land ownership and jurisdiction; all land ownership adjustments (exchange, purchase, donation, transfer, boundary modification, title claims, sales, grants, excess property); use restrictions (withdrawals, designations, dedications, wilderness, other special areas); encumbrances (rights-of-way acquired or granted, reservations, outstanding rights, partial interests, easements); and changes attributable to resurveys.

The Land Areas of the National Forest System Report (LAR) is an annual publication that tracks NFS land ownership and provides the latest statistics on land areas administered by the Forest Service. The report provides acreage figures for NFS lands in a variety of ways such as by forest, by state, or for Wilderness areas and other special designations.

Land status can also include zoning for private lands. Zoning for private lands is usually provided under State law. In Idaho, the Local Land Use Planning Act as enacted by the Idaho Legislature (I.C. 67-6501 et. seq.) requires counties and municipalities to conduct a comprehensive planning process for local land use planning and zoning.

Zoning on private land within the Plan area in Latah County is covered by the Latah County Land Use Ordinance #269, which sets out the land use codes for Latah County in accordance with the Latah County Comprehensive Plan and Idaho Code (and accompanying Zoning Map of Latah County and the Floodplain Overlay Zone maps) (Latah County Planning Commission 2010).

Zoning on private land within the Plan area in Clearwater County is covered by the Clearwater County Zoning Ordinance, the purpose of which is to promote the orderly

development of property within Clearwater County in accordance with the general objectives of the Clearwater County Comprehensive Land Use Plan (Clearwater County Planning and Zoning Commission 2011).

Zoning on private land within the Plan area in Idaho County is not covered under a comprehensive land use plan.

The "Forests on the Edge" project use GIS to identify areas across the country where private forest services, such as timber, wildlife habitat, and water quality, might be affected by factors such as development, fire, insects, and diseases. The report issued August 2007 titled, *National Forests on the Edge—Development Pressures on America's National Forests and Grasslands* (Stein et al. 2007) seeks to understand where increases in housing density on lands adjacent to NFS lands might affect recreation, wildlife, water resources, and other important public benefits. The Forests on the Edge project has developed several publications over the past few years that are available on their Web site[1].

### 14.1.2 *Land Use*

Land uses are covered by Special Use Authorizations, which include permits, leases and easements, that allow occupancy, use, rights, or privileges on NFS lands. Special use authorizations are legal instruments whose terms and conditions are fully enforceable when reasonable and consistent with law, regulations, and policy. The mission of the Special Use Program is to manage the use and occupancy of NFS land in a manner that protects natural resource values, promotes public health and safety, and is consistent with forest land and resource management plans.

Currently, the Forest Service uses the Special Uses Data System (SUDS) to create and administer Special Use Authorizations. The data in the system are supported by hardcopy files at District, Forest, and in some cases, Regional Offices. The information available from SUDS is only somewhat dependable based on the quality of the data input.

In April 2004, the U.S. Department of Commerce published a report titled, *Improving Rights-of-Way Management across Federal Lands: A Roadmap for Greater Broadband* Deployment (Federal Rights-of-Way Working Group 2004). The intent of the report was to identify and recommend changes in federal policies, regulations, and practices to improve the process of granting rights-of-way for broadband communications networks on lands under federal jurisdiction.

In June 2011, the Office of Inspector General (OIG) completed an audit report titled, *Forest Service Administration of Special Use Program* (OIG 2011). The OIG initiated the audit to assess the effectiveness of the Special Use Program and to determine if Forest Service efforts are meeting the program's objectives.

[1] http://www.fs.fed.us/openspace/fote/

### 14.1.3 *Access Patterns*

Access for this section refers to legal rights-of-ways acquired by the Forest Service across non-NFS land for the management and use of NFS land. Access granted by the Forest Service to others across NFS land is covered in the "Land Uses" section.

As established in 36 CFR 200.12, the LSRS is the official repository for all realty records and land title documents for NFS lands, including acquired rights-of-ways (see full discussion of LSRS above in "Land Ownership Status" section).

In April 1992, the General Accounting Office (GAO) completed a report titled, *Federal Lands Reasons for and Effects of Inadequate Public Access* (GAO 1992). The report responded to a congressional request for the GAO to complete a review of the adequacy of public access to land managed by the Forest Service and the Bureau of Land Management (BLM).

In November 2013, the Center for Western Priorities published a report titled, *Landlocked: Measuring Public Land Access in the West* (Center for Western Priorities 2013). The report uses GIS mapping to estimate the amount of public land acres in several western states that cannot legally be accessed by the public. The majority of these inaccessible lands are managed by the Forest Service and BLM.

## 14.2 INFORMING THE ASSESSMENT

For the land status and ownership and land use, the best available science was used to inform the assessment.

## 14.3 CURRENT CONDITIONS

### 14.3.1 *Land Status and Ownership*

The Nez Perce–Clearwater National Forests (Forests) comprise approximately 3,904,128 acres (Forest Service 2012). The Planning area consists primarily of large contiguous tracts of NFS land. The one exception is the Palouse Ranger District, which is made up of smaller, more fragmented tracts of NFS land.

The Forests are bound to the north, east, and south by other NFS lands, which creates a relatively small number of miles of federal/private property boundary for its size. Once again, the exception is the Palouse Ranger District, which is composed of fragmented tracts of NFS land that create more miles of property boundary than would be typical for its size.

The majority of land adjacent to the west of the Clearwater National Forest portion of the Forests is owned by large private timber companies or managed by the State of Idaho, with a small percentage being owned by private individuals. The majority of land adjacent to the west of the Nez Perce National Forest portion of the Forests is owned by private individuals, with a smaller percentage being managed by the BLM and the State of Idaho.

Approximately 40,000 acres of private timber company land is intermingled with NFS lands in a checkerboard pattern in the Upper Lochsa River area. These checkerboard lands are a relic of the railroad land grants of the 1860s. The private timber company checkerboard land creates approximately 250 miles of property boundary.

In addition, approximately 100 private inholdings of various sizes are scattered throughout the Planning area. For the most part, these private inholdings were created when mining claims and homestead entries were patented to private individuals. These scattered private inholdings create additional miles of irregular property boundary.

Land ownership status on NFS lands can change over time through land adjustments. Land adjustments involve transfer of fee title and result in a change in legal land ownership. Land adjustments can result from land exchange, purchase, donation, sale, transfer, condemnation, and interchange.

Ownership of NFS lands within the Planning area has changed since the last planning cycle. Since 1987, NFS ownership has increased by 809 acres on the Nez Perce National Forest portion and decreased by 5,622 acres on the Clearwater National Forest portion of the Forests (Forest Service 1987, 2012).

### 14.3.2 *Land Use*

The Forest Service special use program authorizes the use and occupancy of NFS lands that provide a benefit to the general public and protect public and natural resource values. Currently, there are over 74,000 authorizations on NFS lands for over 180 types of uses (OIG 2011). Uses in the lands program include water transmission lines, telecommunications, research, and granting road and utility rights-of-way.

At the time of this assessment, there were 372 Special Use Authorizations issued within the Planning area, including current authorizations and authorizations that have expired (Table 14-1). In the instances of authorizations that have expired, the use is still occurring and annual fees are being collected (Forest Service 2012).

**Table 14-1. Special use authorizations**

| Type of Use | Number of Authorizations |
|---|---|
| Agriculture | 7 |
| Community and Public Information | 12 |
| Feasibility Research, Training, Cultural Resources, and Historical | 5 |
| Industry | 28 |
| Energy Generation and Transmission | 13 |
| Transportation | 209 |
| Communication Uses | 33 |
| Water | 65 |

Source: Data from SUDS report dated April 18, 2012 (unpublished data)

The majority of existing Special Use Authorizations are for transportation-related uses. Of the 209 existing transportation authorizations, 150 are easements granted under the Forest Road and Trail Act. Of these, 51 are easements granted to large timber companies or the Idaho Department of Lands for access to private lands adjoining the Palouse Ranger District. An additional 54 are easements issued to the private land owner for access to the private checkerboard lands in the Upper Lochsa River area.

The second most frequently permitted category is for water-related facilities. Of the 65 authorizations currently issued, 47 are for water lines (12 for irrigation and 35 for

domestic water). The majority of these are issued to private landowners for water supply to their private land. For example, 22 of the 35 water lines for domestic water are issued to private land owners in the town site of Dixie, a large subdivided inholding to the Forests.

The third most frequently permitted category is for communication uses, which include communication sites, telephone lines, and fiber optic cable. Of the 33 authorizations currently issued, 20 are for communication facilities such as internet, AM/FM Radio, and private and commercial mobile radio. These facilities are commonly associated with high mountain tops where better coverage can be achieved.

### 14.3.3 *Access Patterns*

During the process of developing NFS roads and trails across the country, the Forest Service acquired approximately 30,000 rights-of-way across lands in other ownerships FS Training Manual, September 1999 Access to 17.3 million acres that are managed by the Forest Service, primarily in the western states, is inadequate (GAO 1992). Perfecting this access would entail the acquisition of approximately another 28,000 easements, involving approximately 7,500 miles of rights-of-way for both roads and trails (NCTC 1999).

The Center for Western Priorities (2013) reports the State of Idaho as having 163,314 acres of land managed by the Forest Service and BLM that does not have public access. The report also encourages federal agencies to take a more comprehensive approach to identifying public access routes before they are lost, along with identifying closed-off public lands and enhancing access (Center for Western Priorities 2013).

It is assumed that over time, the Forests have acquired legal access to the majority of the main access roads/entry points to NFS lands currently being used for public access and management of NFS land. To determine the accuracy of this assumption, an in-depth access analysis would need to be completed, which would require substantial time and funding for a qualified lands specialist to complete.

On the Palouse Ranger District, where NFS lands are fragmented and legal access can be more difficult to obtain due to multiple land ownerships, there are three Cost Share road agreements in place that allow the Forests to acquire additional access when required. Two additional Cost Share road agreements are in place on the North Fork Ranger District, where private timber company land is adjacent to the forest boundary and agreements are mutually beneficial.

Additionally, known trail and road access points to the Forests exist where obtaining permanent legal access would be valuable for improved recreational access and management opportunities. There is also a continuing need to acquire permanent or temporary access on a project-by-project basis. The time and process required to acquire sufficient legal and physical access is often a challenge for meeting project timelines.

## 14.4 TRENDS AND DRIVERS

One of the greatest trends affecting the management of land ownership status and land uses and access patterns is escalating housing development on private rural lands along forest boundaries. As more people choose to live at the urban fringe and in scenic, rural areas, open space lands, such as farms and ranches, including those adjacent to NFS, are being lost to development (Forest Service 2007).

Even within national forest boundaries, the number of housing units on privately held lands increased from 500,000 to 1.5 million between 1950 and 2000 (Stein et al. 2007). Between the years 2000 and 2030, a substantial increase in housing density is expected to occur on more than 21.7 million acres of rural private land (8% of private land) located within 10 miles of NFS lands (Stein et al. 2007). Residential development projections for private lands within 10 miles of the Nez Perce National Forest and the Clearwater National Forest are 7% and 2% respectively for the same time (unpublished data available in the project record).

Increased housing density in areas adjoining NFS lands can increase the potential for encroachment, trespass, and unauthorized use and occupation of the public's land and resources (Stein et al. 2007). Encroachments onto national forests can transform publicly owned land into privately claimed land for uses such as pastures, garbage dumps, and personal storage sites. Another significant impact from development on adjoining private lands includes illegal private road building and user-created off-highway vehicle trails on NFS land.

### 14.4.1 *Land Status and Ownership*

As development on adjacent private lands and inholdings increases, Forests face management challenges associated with controlling property lines. Limited funding, resources, and workforce have not kept pace with increased development on adjacent private lands and the Forest Service estimates that control of property boundary lines for approximately 1 million acres of public land has been heavily compromised because of encroachment and trespass by adjoining landowners (Stein et al. 2007).

Developments occurring on inholdings can increases encroachment cases and the need for additional Special Use Authorizations and can limit management options on adjacent federal lands. Increasing land adjustments can reduce the impacts to NFS management caused by increased development. An active land adjustment program can reduce the complications of managing NFS land where it is comingled with private lands.

### 14.4.2 *Land Use*

The demand for Special Use Authorizations is higher where public and private boundaries meet. Private land owners often require an authorization from the Forests for private road access, waterlines, and other utilities. The need to grant additional authorizations increases as private lands adjacent to or within the NFS boundary are subdivided, which increases the workload to the special uses program. At present, the Forest Service lacks the resources it needs to manage the special uses program (OIG 2011). An increase in special uses also influences management of the Plan area because authorizations may limit resource decisions.

An additional driver of change in land uses is the ever-growing demand of technology in the field of communications. NFS lands often provide the highest points in rough country which are desirable from a coverage standpoint for uses such as internet and cell phone service. The request for communications sites on NFS lands has increased as these services expand to more remote locations. Communication sites are critical for the wireless industry, which has a growing need for additional antenna sites, including in remote communities once considered too isolated for the investment of infrastructure capital (Federal Rights-of-Way Working Group 2004).

### 14.4.3 *Access Patterns*

Private landowners' unwillingness to grant unrestricted public access across their land has increased as the public's use of federal land has increased (GAO 1992). Factors contributing to inadequate access were private landowners' concerns about vandalism, potential liability, and desire for privacy or exclusive personal use (GAO 1992). Though this report is somewhat dated, the same reasons are being given today by private landowners for their unwillingness to grant permanent public access across their land. Combine this with the trend of private inholdings and private lands being developed adjacent to the Forests boundaries, and acquisition of legal access becomes much more costly and difficult when dealing with multiple private land owners rather than one land owner.

Working with private landowners to gain permanent legal access is getting more difficult where access to NFS lands was never perfected in the past. Being unable to gain permanent legal access has a negative effect on the Planning area because it limits management options and the public's opportunities to access NFS land.

### 14.4.4 *Information Needs*

### 14.4.5 *Landownership Status*

A consistent GIS boundary layer is valuable to track the miles of property boundary for monitoring and maintenance and could be used to track trespasses/encroachments when they are identified. The Nez Perce National Forest has a GIS boundary layer; the Clearwater National Forest has yet to develop a GIS boundary layer.

### 14.4.6 *Land Uses*

In 1999, the Forest Service issued guidance that encouraged Forests to consider including in land and resource management plan (forest plan) revisions, appropriate programmatic actions and decisions that would improve efficiencies in project-level special use procedures and customer service. This direction was reiterated after the 2011 OIG audit of the Forest Service special use program in a Washington Office memo dated September 19, 2011 (Holtrop Memorandum 2011). Forest planning decisions that could improve special uses management efficiencies include land allocations for long-term use or occupancy, such as communication site designations. Other planning decisions to consider include establishing management standards and guidelines within each land allocation and Forest-wide or area-wide standards and guidelines for special uses (Forest Service and BLM 1999).

For planning purposes, evaluating current and potential communication sites on the Forests is necessary to determine if they should be designated in the forest plan revision. Designating communication sites in forest plan revision is desirable to help guide decisions related to the expansion of existing permitted sites and the authorization of new sites. As technology in the communications industry continues to expand, additional demands will be placed on the Forest Service to accommodate these uses.

Developing a GIS layer that shows the locations of all special use authorizations would also be helpful. This development would highlight the relationship of permitted uses to landownership patterns. GIS layers are not necessarily required to develop a forest plan, but would be a valuable tool for drawing conclusions related to land uses in the forest plan and determining if standards and guides would be helpful in specific areas.

### 14.4.7 *Access Patterns*

In 1991, the Forest Service issued guidance to field offices to improve access planning efforts. This guidance required that each forest plan include a transportation plan that would identify the access rights needed to support the resource objectives of the respective forest plan (GAO 1992). To accomplish the goals set out in this guidance, the Forests would need to develop an inventory of roads and trails that provide access to the Forests and evaluate if the Forests have legal and physical access on these roads. The Clearwater National Forest began an inventory, but due to the lack of funds, staff have not been able to complete the effort. The intent of the inventory would be to verify whether or not the Forests have legal access where it is believed legal and physical access is currently held. There is a need to review access and perfect title, where needed, on existing roads and trials to ensure access is not lost in the future. In addition, an inventory would identify areas where legal and physical access would be valuable to ensure public access and complete ability to manage NFS lands in the future.

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