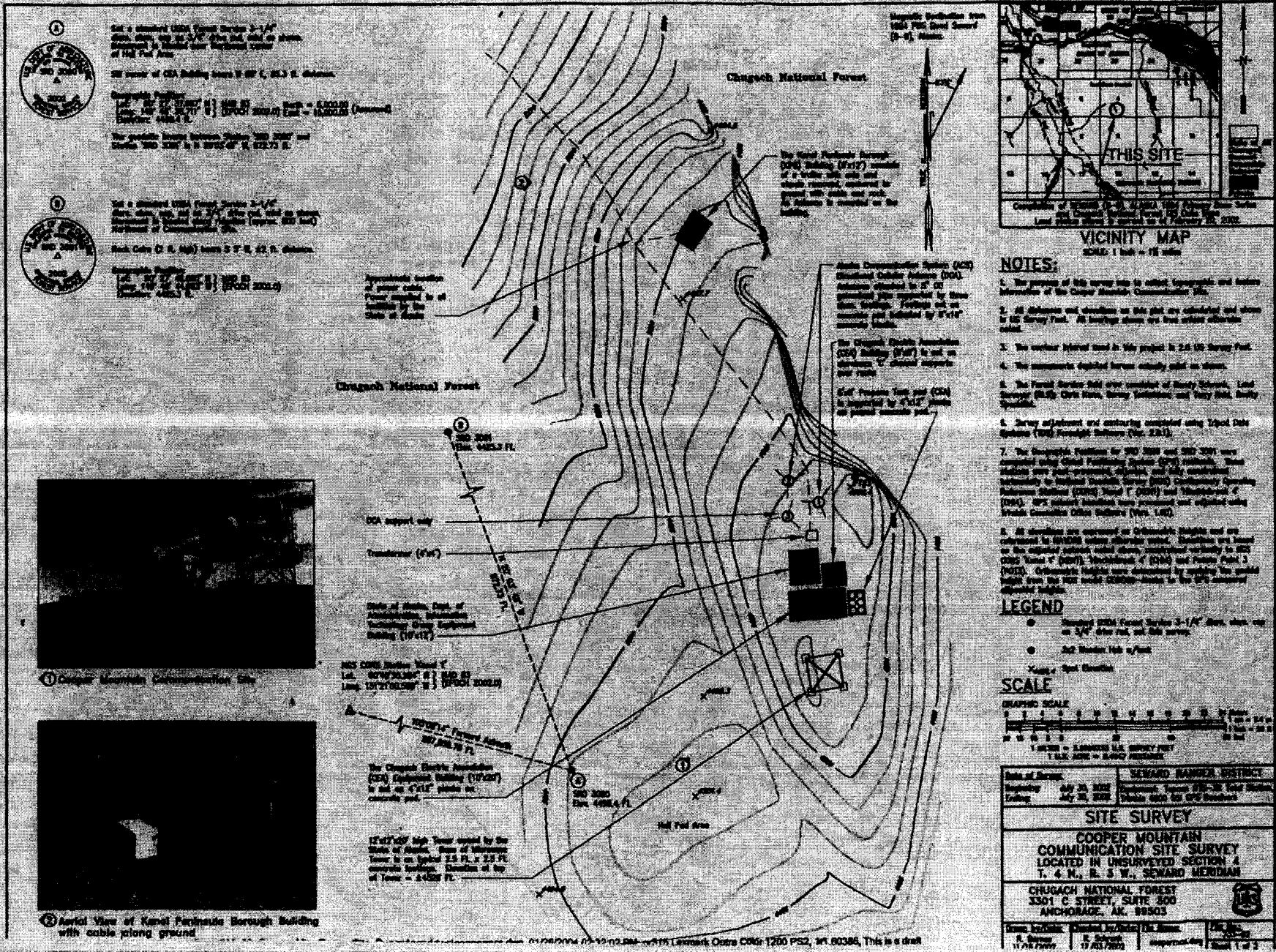
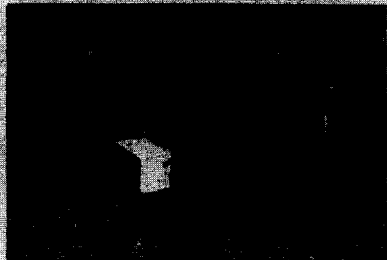


Exhibit A to Resolution 2004-103



① Cooper Mountain Communication Site



② Aerial View of Kanih Peninsula Borough Building with cable being laid



United States
Department of
Agriculture

Forest
Service

Seward
Ranger
District

P.O. Box 390
334 Fourth Avenue
Seward, AK 99664-0390

File Code: 2720-2

Date: September 15, 2004

David Gibbs
Emergency Manager
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

Dear Mr. Gibbs:

Enclosed is a communication site lease for the use of the Cooper Mountain electronic site. Please review the lease carefully, have the appropriate official sign the lease and return it to our office. An executed copy will be returned to you.

Also enclosed is a copy of the Cooper Mountain Communications Site Plan. The plan provides site management objectives, policies and procedures for use of the site. The site plan is attached to and made a part of the permit.

The lease expires on December 31, 2023. This date coincides with the other users on the Cooper Mountain site.

Due to the public safety nature of your communications use, rental fees have been waived pursuant to 36CFR251.57. If your need of the site changes, you may no longer qualify for a fee waiver. Also, please note that the Forest Service must approve modifications to the site in writing.

If you have any further questions, please contact Karen O'Leary, Permit Administrator at 224-4110 or by email at: kaoleary@fs.fed.us.

Sincerely,


DEBORA COOPER
District Ranger

Enclosure: lease, site plan



Authorization ID: SEW242
Contact ID: KENAI PENINSULA BORO
Expiration Date: 12/31/2023
Use Code: 806

FS-2700-4a (05/03)
OMB 0596-0082

**U. S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
COMMUNICATIONS USE LEASE
AUTHORITY:
FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976**

Kenai Peninsula Borough, Emergency Manager, 144 N. Binkley, SOLDOTNA, AK, 99669.

THIS LEASE, dated this _____ day of _____ by and between the UNITED STATES OF AMERICA, acting through the Forest Service, Department of Agriculture (hereinafter called the "United States" or "Forest Service"), as authorized by the Act of October 21, 1976, (90 Stat. 2743; 43 U.S.C. 1761, et seq.), and Kenai Peninsula Borough, its agents, successors, and assigns (hereinafter called the "Lessee").

The United States and the Lessee are jointly referred to herein as the "Parties". As used herein, the "Authorized Officer" refers to the Forest Service official having the delegated authority to execute and administer this lease. Generally, unless otherwise indicated, such authority may be exercised by the Forest Supervisor or District Ranger of the Chugach National Forest wherein the following described lands are located.

The United States, for and in consideration of the terms and conditions contained herein and the payment of the United States of a rental in advance by the Lessee, does hereby grant to the Lessee a lease for the following described lands in the County of Kenai Peninsula Borough State of Alaska, Sec. 4, T. 4 N., R. 3 W., SEWARD PRINCIPAL MERIDIAN (hereinafter called the "property"). The Lessee accepts this lease and possession of the property, subject to any valid existing rights, and agrees not to use the property, or any part thereof, except as a site for only the construction, operation, maintenance, and termination of a Public Safety Radio Repeater communications facility.

The location of the property is shown generally on the site plan dated 4/21/2004 for the Cooper Mountain Communications Site, which is attached and made part hereof as Exhibit A.

The dated and initialed exhibit(s), attached hereto, are incorporated into and made a part of this instrument as fully and effectively as if they were set forth herein in their entirety.

The parties agree that this lease is made subject to the following terms and conditions.

I. TENURE, RENEWAL AND TRANSFERABILITY

A. This lease shall terminate at one minute after midnight on 12/31/2023. Termination at the end of the lease term shall occur by operation of law and shall not require any addition notice or documentation by the Authorized Officer. This lease is not renewable; but the Lessee has the right to request a new lease pursuant to Paragraph "C" below.

B. The Lessee shall undertake and pursue with due diligence construction and operation that is authorized by this lease. To the extent specified in Exhibit A operation shall commence on immediately. This lease shall terminate if operation does not commence by that date, unless the parties agree in writing, in advance, to an extension of the commencement date.

C. If the Lessee desires a new lease upon termination of this lease, the Lessee shall notify the Authorized Officer accordingly, in writing. The notice must be received by the Authorized Officer at least one year prior to the end of the lease term. The Authorized Officer will determine if the use should continue and, if it is to continue, if a new lease should be issued to the Lessee and under what conditions. The Authorized Officer shall require payment of any amounts owed the United States under any Forest Service authorization before issuance of another authorization.

D. This lease is assignable with prior written approval of the Authorized Officer, except when the rental has been waived in whole or part. Renting of space does not constitute an assignment under this clause.

II. RENTAL

A. The Lessee must pay in advance an annual rental determined by the Authorized Officer in accordance with law, regulation, and policy. The annual rental will be adjusted by the Authorized Officer to reflect changes in fair market value, annual adjustments using the Consumer Price Index - Urban (CPI-U), changes in tenant occupancy, or phase-in rental, if applicable.

B. Fees for this use have been exempted or waived in full pursuant to 36 CFR 251.57, or revisions thereto, and direction in FSH 2709.11, chapter 30.

C. Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any rental amount not paid within 30 days from the date the rental or rental calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the rental or rental calculation financial statement is due. In addition, an administrative penalty at a percentage rate prescribed by law or regulation will be assessed for failure to pay any portion of the debt that is more than 90 days past due. This paragraph shall survive the termination or revocation of this lease, regardless of cause.

D. Disputed rentals are due and payable by the due date. No appeal of rentals will be considered by the Forest Service without full payment of the disputed amount.

III. RESPONSIBILITIES OF THE LESSEE

A. The Lessee is authorized to rent space and provide other services to customers and/or tenants and shall charge each customer/tenant a reasonable rental without discrimination for the use and occupancy of the facilities and services provided. The Lessee shall impose no unreasonable restrictions nor any restriction restraining competition or trade practices. By October 15 of each year, the Lessee shall provide the Authorized Officer a certified statement listing all tenants and customers, by category of use in the facility on September 30th of that year.

B. All development, operation and maintenance of the authorized facility, improvements, and equipment located on the property shall be in accordance with stipulations in the communications site plan approved by the Authorized Officer. If required by the Authorized Officer, all plans for development, layout, construction, or alteration of improvements on the property, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect. Such plans must be approved in writing by the Authorized Officer before commencement of any work. After completion, as-built plans, maps, surveys, or other similar information will be provided to the Authorized Officer and appended to the communications site plan.

C. The Lessee will comply with applicable Federal, State, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this lease. The obligations of the Lessee under this lease are not contingent upon any duty of the Authorized Officer, or other agent of the United States, to inspect the premises. A failure by

the United States, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms or conditions of this lease. Lessee waives all defenses of laches or estoppel against the United States. The Lessee shall at all times keep the title of the United States to the property free and clear of all liens and encumbrances.

D. Use of communications equipment is contingent upon the possession of a valid Federal Communication Commission (FCC) or Director of Telecommunications Management/Interdepartmental Radio Advisory Committee (DTM/IRAC) authorization, and the operation of the equipment is in strict compliance with applicable requirements of FCC or IRAC. A copy of each applicable license or authorization shall at all times be maintained by the Lessee for each transmitter being operated. The Lessee shall provide the Authorized Officer, when requested, with current copies of all licenses for equipment in or on facilities covered by this lease.

E. The Lessee shall ensure that equipment within his or her facility (including tenant and customer equipment) operates in a manner which will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site. If the Authorized Officer or authorized official of the Federal Communication Commission (FCC) determines that the Lessee's use interferes with existing equipment, the Lessee will promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the Authorized Officer or FCC official.

F. When requested by the Authorized Officer, the Lessee will furnish technical information concerning the equipment located on the property.

IV. LIABILITIES

A. The Lessee assumes all risk of loss to the authorized improvements.

B. The Lessee shall comply will all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation and maintenance of any facility, improvement, or equipment on the property.

C. The Lessee shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the Lessee's use or occupancy of the property. The Lessee's indemnification of the United States shall include any loss of personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this lease. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this lease, regardless of cause.

D. The Forest Service has no duty, either before or during the lease term, to inspect the property or to warn of hazards and, if the Forest Service inspects the property, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This paragraph shall survive the termination or revocation of this lease, regardless of cause.

E. The Lessee has an affirmative duty to protect from damage the land, property, and interests of the United States.

F. In the event of any breach of the lease by the Lessee, the Authorized Officer may, on reasonable notice, cure the breach for the account at the expense of the Lessee. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the

election of the Forest Service, be deemed to be additional rental hereunder and shall be due from the Lessee to the Forest Service on the first day of the month following such election.

V. OTHER PROVISIONS

A. **Nondiscrimination.** The Lessee shall at all times operate the described property and its appurtenant areas and its buildings and facilities, whether or not on the property, in full compliance with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of Agriculture and in effect on the date this lease is granted to the end that no person in the United States shall, on the grounds of race, sex, color, religion or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any of the programs or activities provided thereon.

B. Revocation, Termination and Suspension.

1. **General.** For purposes of this lease, termination, revocation, and suspension refer to the cessation of uses and privileges under the lease.

"Revocation" refers to an action by the Authorized Officer to end the lease because of noncompliance with any of the prescribed terms, abandonment, or for reasons in the public interest. Revocations are appealable.

"Termination" refers to the cessation of the lease under its own terms without the necessity for any decision or action by the Authorized Officer. Termination occurs automatically when, by the terms of the lease, a fixed or agreed upon condition, event, or time occurs. For example, the lease terminates at expiration. Terminations are not appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

2. This lease may be suspended or revoked upon breach of any of the conditions herein or upon nonuse. Nonuse refers to a failure to operate the facilities on the property for a period of one year.

3. Except in emergencies, the Authorized Officer shall give the Lessee written notice of the grounds for revocation or suspension and a reasonable time, not to exceed 90 days, to complete the corrective action. After 90 days, the Forest Service is entitled to such remedies as provided herein.

4. This lease may be revoked at the discretion of the Forest Service when in the public interest. When revoked in the public interest, the Lessee shall be compensated subject to the availability of appropriated funds. Compensation shall be based upon the initial cost of improvements located on the lease, less depreciation as allocated over the life of the improvements as declared by the Lessee's Federal tax amortization schedules.

5. Any discretionary decisions or determinations by the Authorized Officer on revocation or suspension are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

6. In the event the Authorized Officer decides not to issue a new lease, or the Lessee does not desire a new lease, the Authorized Officer and the Lessee shall, within six months prior to the termination date of this lease, agree upon a mitigation plan to restore and stabilize the site.

7. Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. Delinquencies may be subject to any or all of the following conditions:

a. Administrative offset of payments due the holder from the Forest Service.

- b. Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).
- c. The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, et seq.).

In the event this lease is revoked for noncompliance, the Lessee shall remove all structures and improvements within 180 days (seasonal conditions permitting), except those owned by the United States, and shall restore the site as nearly as reasonably possible to its original condition unless this requirement is otherwise waived in writing by the Authorized Officer.

If the Lessee fails to remove all structures or improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States.

C. **Members of Congress.** No member of or Delegate to Congress or Resident Commissioner shall benefit from this lease whether directly or indirectly, except when the lease provides a general benefit to a corporation.

D. **Reservations.** This lease is granted subject to the following reservations by the United States:

1. The right to all natural resource products now or hereafter located on the property unless states otherwise, and the right to utilize or dispose of such resources insofar as the rights of the Lessee are not unreasonably affected.
2. The right to modify the communications site plan as deemed necessary.
3. The right to enter upon the lease and inspect all facilities to assure compliance with the conditions of this lease.
4. The right of the United States to require common use of the property, and the right to authorize use of the property for compatible uses, including the subsurface and air space.

In the event of any conflict between any of the preceding printed clauses or any provisions thereof and any of the following clauses or any provision thereof, the preceding clauses shall control.

E. **Improvement Relocation (X33).** This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer.

F. **Archaeological-Paleontological Discoveries (R10-X17a).**

(1) FOR PERMITS WHERE GROUND DISTURBING ACTIVITIES ARE NOT PERMITTED:

Items of historic, prehistoric, or paleontological value are protected under various Federal laws, including the Antiquities Act of 1906 (16 U.S.C. 433), the Archaeological Resource Protection Act of 1979 (16 U.S.C. 47033) as amended, and Federal regulations. If historic, prehistoric, or paleontological objects or sites are discovered during activities under this permit, the holder is responsible for assuring that those objects or sites are not disturbed during the course of the activities of the holder or the holder's clients. The holder must notify the Forest Service of such discovery at the earliest opportunity. Failure to comply with this clause may result in criminal prosecution of the holder for violation of a Federal law or regulation.

(2) FOR PERMITS WHERE GROUND DISTURBING ACTIVITIES ARE PERMITTED:

Items of historic, prehistoric, or paleontological value are protected under various Federal laws, including the Antiquities Act of 1906 (16 U.S.C. 433), the Archaeological Resource Protection Act of 1979 (16 U.S.C. 47033) as amended, and Federal regulations. If historic, prehistoric, or paleontological objects or sites are discovered during ground disturbing activities under this permit, the holder must cease such activities in the vicinity of the discovery. The holder is responsible for protecting the objects or sites from further disturbance until the Forest Service is notified. The holder must not resume activities in the area of the objects or sites until written approval from the Forest Supervisor is given. Failure to comply with this clause may result in criminal prosecution of the holder for violation of a Federal law or regulation.

ACCEPTED this _____ day of _____, 1_____, the undersigned have read, understand and accept the terms and conditions of this lease.

Lessee

IN WITNESS WHEREOF, the Forest Service, by its Authorized Officer, has executed this lease on the day and year first written above.

UNITED STATES OF AMERICA

DEBORA COOPER, District Ranger
Forest Service
Department of Agriculture

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wildemess Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archaeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing these authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and use information, sublease information, and other similar miscellaneous information requests. This included the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, including suggestions for reducing this burden.