35377

FORM Ne. ST-

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# Vol. <u>mal</u> Page 1991 K-43532 SPECIAL I ASSIGNMENT OF CONTRACT SPECIAL USE PERMIT

**CONT** 

al property!-

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POSTLA

# In CONSIDERATION of the sum of One Hundred Sixty-Five Thousand and no/100th DOLLARS.

to me in hand paid, the receipt whereof is hereby acknowledged, I do hereby convey, assign, sell, transfer and set over unto William H. Norris 

19.88..., between ... Jean Engstrom

and United States Department of Agriculture, Forest Service. and in and to the ....property.........described therein, and upon full compliance of covenants by assignce with the terms of said bermit I authorize and direct that conveyance be made to such assignce.

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Description: See Attached copy of the Special Use Permit and Amendment, which are incorporated herein and made a part hereof.

Where the context so requires, the singular includes the plural.

ASSIGHMENT OF CONTRACT (by Vendee-Buyer). (Personal property eaty, net for a

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# STATE OF OREGON,

County of ... Deschutes

This instrument was acknowledged before me on September 27, 1991, by Jean Engstrom

55.

	TIANA L. VAN LANDUYT
	NOTANT PUBLIC - OREGON
(SEAL	
	My Commission Fromes

Deor 2 Von	Jolyge
Notary Public for Oregon My commission expires	5-21-94

Note. This form is not suitable for assignments of security agreements and interests under the Uniform Commercial Code. ORS 79-4050(2), (See Form No. UCC-3]. e e de la companya d

USDA - Forest Service	Holder No.	Type Site	Authority
	5609/01	123	712
TERM SPECIAL USE PERMIT	Auth. Type	Issue Date	Expir. Date
For Recreation Residences	18	01/01/89	12/31/08
Act of March 4, 1915, As Amended (Ref. FSM 2710)	Location Se 0601024103	equence No.	
	Latitude	Longitude	LOS Case

19916

(2700-18 (6/88)

Jean Engstrom of

(Holder Name)	(Billing	Address - 1)	
P.O. Box 8177	Black Butte Ranch	OR	97759
(Billing Address - 2)	(City)	(State)	(Zip Code)

(hereafter called the holder) is hereby authorized to use National Forest lands. for a recreation residence for personal recreational use on the <u>Deschutes</u> National Forest, subject to the provisions of this permit including items <u>I</u>. through <u>XI</u>., on page(s) <u>2</u> through <u>8</u>. This permit covers 0.54 acres.

Described as: (1) Lot CL SH-1 11 of the Crescent Lake tract. (A plat of which is on file in the office of the Forest Supervisor.)

# 

The following improvements, whether on or off the site, are authorized in addition to the residence structure:

On-lot facilities: Storage building. Off-lot facilities: Maintaining an off-summer-home-lot water supply system (including pipe line, pump, and storage tank) for domestic use only. A strip of land approximately 1980 feet in length and 2 feet wide to accommodate a buried pipe line between Crescent Lake and the south boundary of Lot 11. Driveway, stairway.

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

# THIS PERMIT IS NOT TRANSFERABLE

PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDI-	TIONS.
ACCEPTED: Jean Engstrom	-9-47
HOLDER'S NAME AND SIGNATURE	DATE
Deren 7 moore jou	12-12-83
APPROVED: SUZANNE C. RAINVILLE District Ranger AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE	DATE

EXHIBIT "B'	ų,	j:	

# TERMS AND CONDITIONS

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I. AUTHORITY AND USE AND TERM AUTHORIZED.

A. This permit is issued under the authority of the Act of March 4. 1915, as amended (16 U.S.C. 497), and Title 36, Code of Federal Regulations, Sections 251.50-251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 2720, 2340; FSH 2709.11, Chap. 10-50). Copies of the applicable regulations and policies will be made available to the

holder at no charge upon request made to the office of the Forest Supervisor. B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family. and guests. Use of the permitted improvements as a principal place of residence

is prohibited and shall be grounds for termination of this permit. D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such

service by a Government agency, utility association, or individual. E. Expiration at End of Term: This authorization is for a term of 20 years and will expire on December 31, 2008.

II. OPERATION AND MAINTENANCE.

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.

- 2. Maintenance of the facilities.
- 3. Size, placement and descriptions of signs. 4. Removal of garbage or trash.
- 5. Fire protection.

6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

III. IMPROVEMENTS.

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the site, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

RESPONSIBILITIES OF HOLDER. IV.

A. The holder, in exercising the privileges granted by this permit. shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal

for enforcing laws, regulations, ordinances and the like which are under the 19918

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized

use, during construction, operation, and maintenance of the improvements. D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations

E. The holder shall maintain the improvements and premises to standards

of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the

The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing

permission from the authorized officer, the holder shall remove such hazards. H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized

V. LIABILITIES.

A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for

B. The holder shall hold harmless the United States from any liability

from damage to life or property arising from the holder's occupancy or use of

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the unauthorized cutting of timber in

A. Fee Requil .ent: This special use authoriz .ion shall require payment in advance of an annual rental fee.

B. Appraisals:

1. Appraisals to ascertain the fair market value of the site will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in 2003.

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2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed giving accurate and careful consideration to all market forces and factors which tend to influence the value of the site.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the site for recreation residence use.

Fees will be predicated on an appraisal of the site as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator - Gross National Product (IPD-GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD-GNP. except that the maximum annual fee adjustment shall be 10 percent when the IPD-GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD-GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the site, at least every 20 years.

2. If notice of nonrenewal has been given, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new 20-year permit should later be issued, the holder shall pay the United States one-half of the amount of fees foregone, for the most recent 10-year period in which the permit has been under nonrenewal notice, by the United States while the previous permit was under a nonrenewal notice. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits: Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD-GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at \$1,009.00 per year and the fee is due and payable annually on January 1 (insert date). Payments will be credited on the date received by

VI. FEES.

the designated collect; officer or deposit location. ( the due date(s) for any of the above paymen or fee calculation statements ( 11 on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

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F. Interest and Penalties:

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM-6-8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, late payment charge, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 <u>et seq.</u>).

VII. TRANSFER, SALE, AND RENTAL.

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the eligible family member (parent(s), children, and grandchildren) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person to whom title has been transferred will be granted a new permit. Such new permit can be, at the discretion of the authorized officer, for a full term or for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser before finalizing the sale. The holder cannot make bind or representations to the purchases as to whether the 19921 Forest Service will real worize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

# VIII. TERMINATION.

A. Termination for Cause: This permit may be terminated for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such termination for cause, the holder shall be given notice and provided a reasonable time--not to exceed ninety (90) days--within which to correct the breach.

B. Termination in the Public Interest During the Permit Term:

1. This permit may be revoked or terminated during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b)). In the event of such termination in the public interest, the holder shall be given one hundred and eighty (180) days prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the site in a shorter period of

2. The Forest Service and the holder agree that in the event of a termination in the public interest, the holder shall be paid damages. Termination in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest termination shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another site which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of termination. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of termination. If the holder has received notification that the permit will not be renewed, then the amount of damages shall be adjusted as of the date of termination by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to termination (measured from the date of the notice of termination) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: <u>Provided</u>. That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 211.18) and the amount as determined on appeal shall be final and conclusive on the parties hereto: <u>Provided further</u>. That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final

## IX. RENEWAL.

This permit may be renewed for another term up to 20 years in Α. duration if the site is still being used for the purposes previously authorized and is being continually operated and maintained in accordance with all the provisions of the permit. In making a renewal, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current federal and state land use plans, laws, regulations, or other management decisions. (36 CFR 251.64).

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B. The authorized officer may decide to renew this authorization at any time prior to the expiration date of this permit. Ten years prior to the expiration date of this permit, the authorized officer will make a renewal decision. If it is determined that the use may continue, a new 20-year authorization will be granted upon the holder's surrendering of the existing authorization.

C. In the event the authorized officer decides not to renew the permit, the holder shall be notified in writing. The holder will be given at least 10 years to utilize the site in the event of a decision not to renew the permit. To the extent that the 10 years would run beyond the expiration date of the permit, the permit term shall be extended to accommodate the 10-year notice, provided that the total tenure of the holder's occupancy does not exceed 30 years by such extension.

D. Two years before permit expiration, the holder may request the Forest Supervisor to review the reason for nonrenewal of the permit in the light of any change in circumstances, and the Forest Supervisor shall determine whether or not changed circumstances warrant continuation of the use. The authorized officer will notify holder in a timely manner of his or her right to make such a request. Determinations under such reviews are not decisions for purposes of the Secretary of Agriculture's administrative appeal regulations. E. Nonrenewal decisions based on a higher public use of the site by

the Forest Service will be documented by an environmental analysis which demonstrates the higher priority use of a site for the benefit of the general public, that is timely, in public demand, and where other sites to satisfy the need cannot reasonably be made available.

X. RIGHTS AND RESPONSIBILITIES UPON TERMINATION OR NONRENEWAL.

A. Removal of Improvements Upon Termination or Nonrenewal: At the end of the term of occupancy authorized by this permit, or upon abandonment, or termination for cause, Act of God, or catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the site to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period--not to exceed one hundred and eighty (180) days from the date the authorization of occupancy is ended--the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the site.

B. In case of termination or nonrenewal, except if termination is for cause, the authorized officer will make every reasonable effort to locate and reserve in-lieu sites available at that time that could be offered the permit holder for building or relocation of improvements. Such sites will be nonconflicting locations within the National Forest containing the residence being terminated or under nonrenewal or in adjacent National Forests. Any in-lieu site offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the termination or

inonrenewal under the S retary of Agriculture administry ive appeal regulations.19923 whichever is later, of his opportunity will terminate.

A. This permit replaces a special use permit issued to: XI. MISCELLANEOUS PROVISIONS. Jean Engstrom

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for

C. Issuance of this permit shall not be construed as an admission by compliance will be furnished to the holder. the Government as to the title to any improvements. The Government disclaims

any liability for the issuance of any permit in the event of disputed title. D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed

E. Any lands described in this permit which have been withdrawn for clauses shall control.

waterpower purposes under the Act of March 3, 1879, or Act of June 25, 1910 (or are embraced in an application or license under the Federal Power Act of June 10, 1920), or have been withdrawn under the Reclamation Act of June 17, 1902. are subject at any time to use in connection with the development of waterpower or for reclamation purposes. This permit, therefore, is issued with the specific understanding that (1) its use shall not interfere with such waterpower or reclamation development and that (2) the permit may be, if necessary, terminated upon ninety (90) days notice when in the judgment of the Federal Power Commission, or of the Bureau of Reclamation in the event of reclamation withdrawals, the lands occupied are needed for use in connection with the generation of hydroelectric power, reclamation developments, or other purposes contemplated by the act or acts under which the lands have been withdrawn. No claim shall be made against the United States or power licensees for or on account of prospective profits or for any injury or damage to properties, improvements, or operations due to such development. The holder will be allowed ninety (90) days in which to remove his improvements.

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United States Department of Agriculture	Record No.	Region (5-47	01_
AMPNOMENT 1	District	User NO.	I I I I I I I I I I I I I I I I I I I
FOR SPECIAL USE PERMIT (Ref. FSM 2714)	1 O2	<ul> <li>Low new set and the set</li> </ul>	123   Card No.
(Ref. FSM 2714) This Amendment is attached to and made a part of the (Term) permit.	41	035	01
a part of the (Term) permit.			issued to
For <u>Recreation Residence</u>			
Jean Engstrom, on 02/13/84			
which is hereby amended as follows:			mit and replac
1. Delete the accrage for the permit	area on page	l or the per	
The permit covers .63 acres ( facilities).			or the off-le
salewing statement to page	e 1 of the pe	;rmit:	
Plats showing the lot and approved	d off-lot fac	ilities are a	ttacneo ano ma
3. Add the following to the impro	page 1 of the	norized in a e permit:	addition to t
Maintaining an off-summer-home-lot pump, and storage tank) for approximately 1980 feet in length	t water supp domestic us and 2 feet i d the south b	ly system (ind se only. A in width to acc boundary of lot	t 11.
4. All other provisions and condi	Ltions of th	ne Special US	Se leimin
This Amendment is accepted subject t conditions <u>1</u> to <u>5</u>			
Amendment.		Authorized Of	fficer   Date
PERMITTEE   Name of Permittee Tean Engstrom	Lan	Eneptron	N 1./2.
Name and Signature	Titlé		Dat
ISSUING 12 A 1 booking			110

## B26 Health, Safety, and Environmental Protection

Holder shall take all measures necessary to protect the health and safety of all persons affected by its activities performed in connection with the construction, operation, maintenance, or termination of the right-of-way, and shall promptly abate as completely as possible any physical or mechanical procedure. activity, event. or condition. existing or occurring at any time: (1) that is susceptible to abatement by the holder, (2) which arises out of, or could adversely affect the construction. operation, maintenance, or termination of all or any part of the water transmission line, and (3) that causes or threatens to cause: (a) a hazard to the safety of workers or to public health or safety, or (b) serious and irreparable harm or damage to the environment (including but not limited to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource). Holder shall immediately notify the authorized officer of all serious accidents which occur in connection with such activities.

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### 2. X33 Improvement Relocation

This permit 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.

#### 3. X49 Nonexclusive Use

This permit is not exclusive; that is, the Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not interfere with the rights and privileges hereby authorized.

### 4. DO3 Esthetics

1.

The holder shall protect the scenic esthetic values of the area under this permit, and the adjacent land, as far as possible with the authorized use. during construction, operation, and maintenance of the improvements.

### 5. X74 Water Rights

This permit confers no right to the use of water by the holder.



