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AUDIT  
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TO: Thomas L. Tidwell  
Chief  
Forest Service

ATTN: Thelma Strong  
Acting Chief Financial Officer  
Forest Service

FROM: Gil H. Harden  
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for Audit

SUBJECT: Evaluation of Forest Service's Processes to Obtain and Grant Rights-of-Way  
and Easements

This report presents the results of our audit of Forest Service's Processes to Obtain and Grant Rights-of-Way and Easements. Your response to the official draft report, dated January 6, 2012, is included in its entirety in the audit report, with excerpts and the Office of Inspector General's position incorporated into the relevant sections of the report. Based on the written response, we have accepted management decision for Recommendations 4, 5, 6, and 7. Management decisions for Recommendations 1, 2, and 3 can be achieved when the agency provides the additional information requested in the report sections *OIG Position*.

Please note that Departmental Regulation 1720-1 requires final action to be reached on all recommendations within 1 year of management decision to avoid being listed in the Department's annual Performance and Accountability Report. Please follow your office's internal procedures in forwarding final action correspondence to the Office of the Chief Financial Officer. Please provide us with a reply within 60 days on Recommendations 1, 2, and 3, describing the corrective actions taken or planned, and timeframes for implementing these recommendations. We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions.



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# Evaluation of Processes to Obtain and Grant Rights-of Way and Easements

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## Executive Summary

This report presents the results of our audit of Forest Service's processes for granting and acquiring easements authorized under the Forest Roads and Trails Act of 1964<sup>1</sup> (FRTA) and its plans to address impacts to Forest Service programs due to changing land use patterns and different uses of the easements. This audit of FRTA easements was originally identified and planned by the Department of Agriculture (USDA) Office of Inspector General (OIG) during our regular risk assessment and planning process. However, we gave a higher priority to the audit after receiving a Congressional request that expressed concerns regarding a proposed FRTA easement amendment being considered by Forest Service. This request was in response to an incident in 2006 when Forest Service and a large timber cooperater met to develop an amendment that would clarify the language of their pre-1994 FRTA easement agreement and would also determine successor rights and responsibilities in the maintenance of FRTA cost share roads.<sup>2</sup>

We determined that Forest Service personnel are properly granting and acquiring easements necessary to manage Federal lands. However, we found that Forest Service is not prepared to address the complex issues arising from the changes in land use and has not effectively addressed the problematic and growing issues over the sale of private forest land that have appurtenant FRTA easements<sup>3</sup> for residential development and commercial use. While Forest Service cannot stop development on private land or restrict access to FRTA roads,<sup>4</sup> it should fulfill its stewardship mission by assessing the risk, developing strategies to lessen the impacts of changing land use, and incorporating appropriate changes into the agency's planning rule and strategic plan. Further, to avoid confusion and dispute, Forest Service should make further efforts to implement a FRTA easement amendment, which would clarify rights and responsibilities before successor landowners come into possession of the land; and provide sufficient guidance to local field staff on how to address landowner disputes once the land has already been sold. Finally, Forest Service should sufficiently oversee the cost share program, including performing necessary reviews and filling critical positions.

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<sup>1</sup> Forest Roads and Trails Act, Public Law 88-657, October 13, 1964.

<sup>2</sup> Cost share roads are those constructed and maintained through cooperative agreements with landowners, primarily major corporate timber landowners, to share the costs of a single road system and facilitate the exchange of rights-of-way between private landowners and the government. The roads provide access to intermingled lands within the National Forest System and promote the productive management and use of the lands.

<sup>3</sup> Forest Service Manual 5409.13, 05 – Definitions 10.cd, effective September 3, 1991. Appurtenant easements are transferable and connect with, attach to, or benefit specific lands owned by the grantee.

<sup>4</sup> The Office of the General Counsel analyzed the FRTA language and determined that the developer and successor landowners could use these cost share roads or FRTA easements as residential access roads.

### *Fulfilling the Stewardship Mission*

Forest Service is to sustain the health, diversity, and productivity of the nation's forests and grasslands by determining forestry conditions; recommending policies and programs; and establishing, evaluating, reporting on, and improving controls in their areas of responsibility.<sup>5</sup> According to Forest Service staff, changing land use is a growing issue threatening the nation's forests and grasslands. Forest Service estimates that 57 million acres of forest land will see rising housing density between 2000 and 2030. Various studies have highlighted the impacts and effects including increase in wildfires, spread of invasive species, and endangerment of the public's health and safety, yet we found that officials have not taken the necessary actions to determine the scope of the problem, to develop a strategy to address it on a nationwide basis, or to assess the potential costs of doing so. Forest Service's priority has been on conservation efforts through programs such as the Forest Legacy Program.<sup>6</sup> As both funding and the available labor force decrease, the agency must assess the condition of forests in order to reprioritize and address the inevitable development of other lands adjacent to and intermingled with National Forest Service (NFS) lands.

Further, Forest Service can guide its strategy by incorporating specific language that addresses the change in land use into its planning rule and its strategic plan for the Government Performance Results Act<sup>7</sup> (GPRA) reporting. We found that while Forest Service's strategic plan from 2007-2012 has seven strategic goals, none identify goals or objectives that focus specifically on the impacts that have already occurred and continue to occur from the change in land use. By including the change in use of land in the strategic plan and planning rule, Forest Service will be better prepared to assess, track, monitor, and evaluate the problems the agency faces.

### *Amending Pre-1994 FRTA Easement Language*

As more and more timber cooperators sell their land to residential landowners, it becomes increasingly important for Forest Service to clarify the successor landowners' rights and responsibilities in maintaining FRTA cost share<sup>8</sup> roads prior to purchase. By implementing an easement amendment to clarify ambiguous pre-1994 FRTA easement language, Forest Service can reduce the number of costly repairs to Forest Service lands and roads and disputes that occur when individual, residential landowners improperly maintain FRTA cost share roads or act in a manner that results in damage to roads or other FS lands.

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<sup>5</sup> Forest Service Manual 1404.

<sup>6</sup> A Federal program, in partnership with States, which supports State efforts to protect environmentally sensitive forest lands. Grants assist States to acquire conservation easements on privately owned lands to generally restrict development of the land and require sustainable forest practices.

<sup>7</sup> Government Performance and Results Act (GPRA) P.L. 103-62, August 3, 1993, as amended by GPRA Modernization Act, P.L. 111-352, January 4, 2011.

<sup>8</sup> Cost share road systems were primarily designed to address the problem of how to manage adjoining Federal and non-Federal lands in the most efficient manner; under this arrangement, Forest Service and private landowners share road maintenance costs based on their relative usage.

According to Forest Service officials, the 2008 proposed FRTA easement amendment, if successfully implemented, would have been a template for all forests that provide cost shared road systems. The amendment made two substantive clarifications: 1) successor landowners were to take measures to protect the health of the forests and to be held responsible and liable for residential use of FRTA roads; and 2) landowners were to create a road users association, thus allowing Forest Service to deal with a single, large entity as the responsible party for road maintenance. However, the amendment was never implemented because local residents believed the residential use of FRTA roads would negatively impact the community. They also criticized Forest Service for working behind closed doors, and questioned whether cost share roads should only be used for hauling timber – which had been their primary purpose historically – or whether they could be used for other purposes, such as access for residential and commercial development. In order to implement a FRTA easement amendment, we recommend that Forest Service address the issues that caused the first proposed amendment to fail; these include negotiating with timber cooperators as part of a public process, determining whether an Environmental Impact Statement needs to be completed, and completing the development of a template easement amendment.

*Providing Sufficient Guidance to Field Staff on Addressing Landowner Disputes*

Local Forest Service officials stated that landowners who inherited the vaguely worded pre-1994 FRTA easements often do not understand their role and responsibilities in maintaining FRTA roads, and thus often take unauthorized actions to snowplow, apply dust abatement treatments, or otherwise perform actions on these easements that adversely impacts Forest Service property. Resulting damages are frequent and costly. One such instance, in which a landowner improperly plowed a snow-covered road, cost approximately \$142,000 to repair. We determined during our audit that because field staffs are uncertain how to appropriately respond to damages, they often do not hold landowners accountable or else take actions that conflict with the Washington Office (WO) officials' interpretations of agency road management policy. In the course of our audit, we found that while WO officials felt that their policies are sufficient, local forest personnel believed that more guidance from the WO would have helped them to address disputes between Forest Service and the successor landowners with FRTA easements. Forest Service officials at both the WO and local levels have agreed that they often have differing views of how successor landowners should maintain FRTA roads and also upon the ways in which existing guidance in the Forest Service Handbook should be adapted to these issues.

It is necessary, then, that Forest Service coordinate at both the WO and local forest levels to establish guidelines for field staffs to follow in addressing issues regarding successor landowners' use and maintenance for these FRTA easements. Forest Service can then communicate those interpretations to all applicable field staffs.



### *Overseeing the Cost Share Program*

Though it is apparent that cost share personnel are uncertain how to apply cost share principles to landowners that are not under a cooperative agreement with Forest Service for sharing and maintaining FRTA roads, we found that the WO has not assessed the extent to which cost share personnel are prepared to handle issues regarding residential successors to FRTA easements. This continues because WO officials consider the cost share program to be a low priority and have not provided adequate oversight and guidance for the cost share program. WO officials are responsible for developing policy to monitor regional activity and to provide oversight.<sup>9</sup> The NFS Deputy Chief has the responsibility to monitor and evaluate the effectiveness of the cost share program in meeting the needs of Forest Service.<sup>10</sup> Beginning in fiscal year (FY) 1995, the NFS Deputy Chief was required to review the cost share program every 5 years.<sup>11</sup> However, only one such review was performed at a national forest in 2003, because Forest Service officials have regarded the cost share roads as a low priority. Such reviews, if completed at the required intervals, could serve as one means for WO officials to familiarize themselves with the issues local forest personnel face in their attempts to administer FRTA roads.

Additionally, Forest Service has lost a key staff member with extensive cost share expertise. We determined that to provide the appropriate oversight and guidance for the cost share program, a program manager is necessary. The duties of this position would include acting as a liaison between field personnel and WO staff, and reviewing and updating all cost share procedures, forms, reports, and training for the field staffs that perform the cost share work in all of the regions and forests. Vacant since 2008, Forest Service officials stated that the position had been staffed in March 2011.

Various concerns, including the sharing of FRTA road maintenance and fire prevention responsibilities, were raised during the negotiations between Forest Service and the timber cooperator. These concerns demonstrate Forest Service's need to better address issues arising from changes in land use. Generally, our work confirmed that Forest Service employees made diligent attempts to fulfill their missions of land stewardship and FRTA road management. However, we recommend that to sufficiently address changing land use and FRTA ownership changes, Forest Service needs to develop a specific strategy for the change in land use and strengthen its guidance and oversight.

### **Recommendation Summary**

- Implement a process to assess the potential extent of changing land use on the NFS and estimate the management costs of addressing this issue. As part of this process, identify any existing estimates of management costs related to changing land use.

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<sup>9</sup> Forest Service Manual 1940.44.

<sup>10</sup> Forest Service Manual 5467.04a.

<sup>11</sup> Forest Service Manual 5467.06a.

- Develop specific goals, strategies, and timeframes for addressing the impacts of changing land use during the next strategic planning cycle in accordance with Forest Service’s strategic plan to sustain the nation’s natural resources.
- Provide appropriate assurance that the new planning rule addresses the change in land use for reducing the potential ecological impacts and risks from development.
- Clarify the process for analyzing and addressing the issues of whether (1) the negotiations with timber cooperators for a FRTA easement amendment should be a public process, and (2) an Environmental Impact Statement needs to be completed under NEPA before an easement amendment can be finalized and implemented.
- Initiate a time-phased process to complete the development of a template easement amendment and Road Users Association Agreement and, whenever possible, to implement the amendment with timber cooperators before they sell their land for residential development or commercial use.
- Establish consistent guidelines for field staffs to follow regarding residential successors to FRTA easements. Determine how the existing cost share policies should be applied to those successors on a nationwide basis, and communicate those interpretations to all applicable field staffs.
- Revise cost share evaluation guidance to include requirements for specific coverage and the number of regions/forests/districts to review, and to require for each evaluation that a timeline be established to implement recommendations and to follow up on previous evaluation results.

## **Agency Response**

In their response dated January 6, 2012, Forest Service officials concurred with Recommendations 4 through 7, and based on their response we were able to reach management decisions on these recommendations.

For Recommendations 1 through 3, which dealt with the issues of stewardship on NFS lands that could be threatened by commercial or residential development on surrounding lands, Forest Service officials believed that they already had the necessary goals, strategies, and processes in place to assess the potential extent to which changing land use could impact NFS lands. They did not believe that attempting to estimate the management costs that Forest Service might incur in the implementation of such strategies would be productive. They believed that Forest Service’s new planning rule, which they agreed to provide by April 30, 2012, would address the issue of changing land use and the need for reducing the potential ecological impacts and other risks resulting from development.

## OIG Position

With regard to Recommendations 1 through 3, we acknowledge that Forest Service has various goals and strategies, such as those in the USDA and Forest Service Strategic Plans, to address the impacts of changing land use on the NFS. However, these are generally broad in nature, and in some cases required the development of management tools or more detailed strategies which, to our knowledge, have yet to be completed. Based on our review of these, we did not believe that they formed a coherent strategy or process either to address the issues detailed in Finding 1 of the report, or to estimate the resources needed to accomplish this. We concur with Forest Service's use of the Forest Legacy Program to acquire and protect lands adjacent to the NFS, but believe that this needs to be part of a larger strategy to protect NFS lands from the impacts of nearby commercial and residential development.

Based on Forest Service's response, we are reaching management decisions on Recommendations 4, 5, 6, and 7. However, we are asking Forest Service officials to provide followup responses on Recommendations 1, 2, and 3, as detailed in the report Sections OIG Position.

## Background and Objectives

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### Background

Forest Service's mission is to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations.<sup>12</sup> As part of this responsibility, Forest Service must maintain the long-term productivity of the land, which includes coordination and administration of outdoor recreation, range and timber management, and the protection of fish and wildlife habitats.<sup>13</sup> Forest Service is required to determine forestry conditions to fulfill its stewardship mission and to recommend policies and programs needed to keep the nation's private and public lands fully productive.<sup>14</sup> Forest Service managers and officials are responsible for establishing, evaluating, reporting on, and improving controls in their areas of responsibility.<sup>15</sup> In FY 2011, Forest Service had an estimated national budget of \$6.1 billion.<sup>16</sup>

Through a series of land grants issued between 1850 and 1871, the United States conveyed over 180 million acres of land to railroad companies in order to encourage the construction of transcontinental rail lines to help settle and develop the west. Portions of forested lands were later reserved from the remaining public domain lands, eventually becoming part of the NFS. This created a "checkerboard" pattern of interspersed land owned by the railroad companies and Forest Service. Over time, the railroad companies sold or traded most of their land to companies whose interest was in the production and harvesting of timber resources.

In the early 1950s, Forest Service and the timber companies recognized the need to build a single system of roads that would allow the necessary access to their intermingled lands. The objective was to reduce the impact on the land, compared to the side-by-side systems of private and public roads that otherwise would have been needed. Through both formal and informal agreements, Forest Service and timber companies shared the costs of constructing and maintaining these roads. The passage of the Forest Roads and Trails Act<sup>17</sup> (FRTA) in 1964 gave Forest Service the authority to grant easements to the timber companies (referred to as "cooperators") and allowed Forest Service to develop a standard format for easements under cooperative construction and use agreements. By the end of FY 1989, the construction of these shared systems of roads had been mostly completed and the cost share program's focus shifted primarily from road construction to road maintenance. Forest Service had acquired or granted easements on almost 15,000 miles of cost shared roads by the end of calendar year 1989. In the 20 years that followed, easements on approximately 1,000 additional miles of cost share roads had been exchanged.

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<sup>12</sup> America's National Forest System (NFS) is composed of 155 national forests and 20 national grasslands on approximately 193 million acres managed by the United States Department of Agriculture's Forest Service.

<sup>13</sup> Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by Public Law 106-580, December 31, 2000, Sec. 6 [16 U.S.C.1604].

<sup>14</sup> Code of Federal Regulations (C.F.R.) 36.200.3.

<sup>15</sup> Forest Service Manual (FSM) 1404.

<sup>16</sup> FY 2011 Budget Summary and Annual Performance Plan

<sup>17</sup> Forest Roads and Trails Act, Public Law 88-657, dated October 13, 1964.

Forest Service identified a growing trend in its 1990 assessment of the cost share program.<sup>18</sup> Because land for timber management was valued significantly less than land for development, timber companies were selling parcels of their intermingled timber land to residential developers and individual residents. This creates complications. First, increased urbanization negatively impacts nearby forest lands, including increased fire risk, spread of invasive species, and endangerment of natural habitats.<sup>19</sup> Second, while the new residential landowners succeed the original large cooperators as parties to the FRTA easements with Forest Service and use these cost share roads as residential access roads, they are not bound by the cooperative agreements that existed between the original cooperators and Forest Service for road maintenance. In 1994, to address both issues, Forest Service amended the standard format for any newly granted FRTA easements by adding a restriction that prohibited residential access on FRTA easement roads. The amended language provided that unless certain criteria were agreed to, including traffic control regulations and other provisions to accommodate such use of the road, there could be no residential use of the FRTA easement.

However, the vast majority of existing FRTA easements predates this revised language. There are approximately 16,000 miles of forest roads built under FRTA easements; however, over 15,000 miles were already in place by 1989 and are governed by the less specific language of the earlier FRTA agreements.<sup>20</sup> This resulted in several disagreements between Forest Service and residential landowners. Prior to 1994, the standard FRTA easement language stated that the cooperator was “granted the right to use the road...for all purposes deemed necessary or desirable by the Grantee in connection with the protection, administration, management, and utilization of the Grantee’s lands or resources...” Although historically Forest Service had interpreted this language to mean that the FRTA cost share roads could not be used for residential access,<sup>21</sup> both cooperators and the successor residential landowners have commonly interpreted it more broadly to mean that the cost shared roads can be used for any purpose, including residential access. This disagreement caused a large cooperator in 2006 to request clarification of the scope of its pre-1994 FRTA easements that were located in seven counties in the western part of Montana.

To ensure that the cost share program is effective in meeting the needs of the agency and the public, the NFS Deputy Chief has the responsibility to monitor and evaluate the cost share program.<sup>22</sup> Beginning in FY 1995, the NFS Deputy Chief was required to review the cost share program every 5 years.<sup>23</sup> On a larger scale, Forest Service’s Washington Office (WO) is

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<sup>18</sup> National Review and Assessment of the Forest Service Road Cost Share Program, presented to Forest Service’s Chief on April 11, 1990, revised October 1, 1990.

<sup>19</sup> *National Forests on the Edge: Development Pressures on America’s National Forests and Grasslands*, Forest Service General Technical Report PNW-GTR-728, August 2007.

<sup>20</sup> An April 2008 legal opinion from USDA’s Office of the General Counsel (OGC) concluded that the use of existing roads for residential access was not prohibited under the language of the pre-1994 FRTA agreements.

<sup>21</sup> In 2006, a District Forest Ranger responded to a potential residential developer by stating that the FRTA easements to be conveyed to him did not provide access for residential purposes. In 2007, a Regional Forester stated to her forest supervisors that “many landowners do not realize their FRTA easements do not usually provide sufficient ‘legal access’ for all aspects of residential use or for other non-resource management purposes.”

<sup>22</sup> Forest Service Manual 5467.04a.

<sup>23</sup> Forest Service Manual 5467.06a.

responsible for developing policy related to monitoring and overseeing all Forest Service activities.<sup>24</sup>

## **Objectives**

Our objectives were to determine if Forest Service is: 1) considering the impacts to Forest Service programs due to future changes in land and rights-of-way and easement usage, 2) properly acquiring and amending easements necessary to manage Federal lands, and 3) granting and modifying rights-of-way and easements in accordance with laws and regulations, and in the best interest of Forest Service's statutory mission.

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<sup>24</sup> Forest Service Manual 1940.44.

## Section 1: Land Stewardship

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### Finding 1: Forest Service Needs to Develop a Strategy for the Change in Land Use

Although Forest Service has implemented a conservation strategy to prevent forested lands from being converted to commercial or residential use wherever possible, the agency has not taken significant actions to mitigate the adverse effects of these land use changes where they have already occurred or are in the process of occurring. Various research and studies conducted by Forest Service have highlighted the impacts and effects that such changes can have on the agency's ability to carry out its responsibilities related to the stewardship of forest lands and wildlife. Forest Service officials have not taken the necessary actions to determine the scope of the problem or to develop a strategy to address it on a nationwide basis, or to assess the potential costs of doing so. Forest Service staff we spoke to attributed this to the agency's decision to prioritize its limited resources and concentrate on acquiring lands which would otherwise be purchased for private use. While this has succeeded in keeping certain lands in their original forested state, it does not prevent or address the development of other lands which are adjacent to and intermingled with NFS lands. Without an assessment of impacts and costs that result from the changing land use and the implementation of a strategy that addresses these impacts, Forest Service's capacity to sustainably manage the nation's forests may be compromised.

The mission of Forest Service is to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations. As part of this responsibility, Forest Service maintains NFS and sustains its multiple uses.<sup>25</sup> At the same time, the agency must maintain the long-term productivity of the land, which includes coordination and administration of outdoor recreation, range and timber management, and the protection of fish and wildlife habitats.<sup>26</sup> Forest Service officials are required to determine forestry conditions to fulfill this stewardship requirement, and to recommend policies and programs needed to keep the nation's private and public lands fully productive.<sup>27</sup> Forest Service managers and officials are responsible for establishing, evaluating, reporting on, and improving controls in their areas of responsibility.<sup>28</sup>

Through the proactive Forest Legacy Program, Forest Service has attempted to safeguard its forests and grasslands from the negative effects of changing land use by working with private landowners, States, and conservation groups to promote sustainable working forests on these private forest lands. In November 2010, Forest Service reached a milestone of protecting more than 2 million acres of private forests threatened by development by acquisition of private forest lands and conservation easements. We acknowledge Forest Service's efforts to conserve land from development through the Forest Legacy Program. However, because Forest Service cannot acquire all private lands whose development would impact the NFS; this program can only

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<sup>25</sup> The Multi-Use Sustained Yield Act (MUSYA) of 1960, Public Law 86-517, June 12, 1960.

<sup>26</sup> Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by Public Law 106-580, December 31, 2000, Sec. 6 [16 U.S.C.1604].

<sup>27</sup> Code of Federal Regulations (C.F.R.) 36.200.3.

<sup>28</sup> Forest Service Manual 1404.

partially address the issues resulting from changing land use. According to Forest Service officials we interviewed, development of privately-held forest land is inevitable as long as these have greater value for commercial or residential purposes than in their original state.

Over the past several decades, private land adjacent to and intermingled with national forests has experienced an increasing change in land use from timber management to residential and commercial development. For instance, from 1982 to 2001, 34 million acres of private lands, equivalent in size to the State of Illinois, were converted to development. Additionally, according to the Chief of Forest Service, 57 million acres of forest land are estimated to see a rise in housing density between 2000 and 2030.<sup>29</sup> Despite this, Forest Service officials stated that the change in land use has not been a priority to the agency and that the lack of funding and staff also hinders the agency's efforts to address the changing land use. As a result, if left unmanaged, the impacts can cause adverse environmental, social, and safety impacts on our national forest lands.

Forest Service's Lands and Realty Program has the fundamental responsibility to protect forest land and resources. It manages Federal land within or adjacent to NFS boundaries through direct land management practices. However, according to Forest Service officials and local forest staff, there is a lack of staffing and expertise for the Lands and Realty Program to meet its goals. As a result, the agency's stewardship over forest land may be jeopardized instead of enhanced. Between FYs 2000 and 2009, the Lands and Realty Program's funding and staffing have each been reduced by about 40 percent; from a budget of \$238.4 million to \$144.4 million, and from a staff of 1,134 to 685. A Forest Service official explained that the level of staffing decreased as the timber industry dwindled. Today there is little expertise left in the Lands and Realty Program staff. Because staffing and funding constraints limit the effectiveness of Forest Service's stewardship mission, Forest Service's strategy and assessments should consider and address these issues to ensure its viability.

The change in land use has potential environmental impacts on the nation's forests and grasslands that include increased wildfires, damage to natural ecosystems, and threats to public safety. In November 2006, the Office of Inspector General (OIG) noted<sup>30</sup> that Forest Service's escalating costs to fight fires was largely due to its efforts to protect homes and other property in the Wildland Urban Interface (WUI)<sup>31</sup> bordering the NFS. Housing development has been steadily increasing, with housing starts in the WUI being three times greater than the national average. By the year 2030, Forest Service anticipates a 40 percent increase in the WUI fire-prone areas of the western Rocky Mountains, where 2.2 million homes are presently located. Forest Service's fire suppression costs are likely to continue to rise as the number of homes in the WUI increases. Because of current public expectations and uncertainties about protection responsibilities, the agency is compelled to suppress fires aggressively when private property is at risk, generally at an increased monetary cost. In FY 2000, wildland fire suppression costs

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<sup>29</sup>Forest Service Chief's speech to the 2009 National Convention of the Society of American Foresters in Orlando, Florida on October 2, 2009.

<sup>30</sup>*Forest Service Large Fire Suppression Costs*, Report No. 08601-44-SF, November 2006.

<sup>31</sup>The WUI is the area where structures and other human development meet or intermingle with undeveloped wildland. Wildland urban interface is any area containing human development, such as residential subdivisions that may be threatened by wildland fires.



were budgeted at \$858 million, while in FY 2009, the budget was increased to \$2.3 billion. Therefore, without a strategy on how to address the changing land impacts, Forest Service remains unprepared to address the significant effects caused by development adjacent to or intermingled with national forest land.

Forest Service research and studies show that changes in land use can also impact ecosystems through the introduction of invasive plant or animal species. The data show that invasive plant species find new points of entry into NFS lands through adjacent fragmented lands and by newly-constructed roads and recreation trails used by homeowners. New invasive species compete with and replace native plants, reduce plant diversity, and cause other disruptions to ecosystem functions. Diseases and insects can be introduced into wildland-protected areas by nursery plants used in nearby landscaping. For example, Forest Service has learned that the rhododendron and camellia plants widely used in landscaping by residential landowners can actually host the pathogen that causes sudden death in native oak trees.<sup>32</sup> Further, as development has fragmented forested lands, a study found that certain predators of white-footed mice—a primary carrier of Lyme disease—were lost, resulting in the spread of Lyme disease.<sup>33</sup>

Further, Forest Service officials, supported by the agency's research, told us that the increased use of forest roads for residential and commercial use can damage natural habitats and threaten public safety. Housing developments and associated roads can fragment wildlife habitat and may prevent wildlife from migrating or moving through areas outside forest boundaries and thus affect species that rely on a variety of ecosystems. A Forest Service engineer explained that because rains and snow cannot be absorbed into the pavement, sediments and pollutants run off into streams, rivers, and lakes. Though Forest Service is not responsible for maintaining or removing snow from forest roads for residential use, improperly maintained roads may pose a danger to public safety during the winter. A cost share specialist reported that a fire marshal in one forested county expressed concerns regarding the ability of emergency vehicles to access developing areas during winter snow conditions. Increased residential use of roads shared by both Forest Service and residential developments increases Forest Service's costs and administrative burdens, and reduces the agency's ability to maintain these roads in the public interest.

Overall, the change in use of land could alter forest lands' ecological, social, and economic resources and increase their management costs.<sup>34</sup> Without an implemented strategy and an understanding of the scope and costs, the conversion of forest land to residential and commercial use represents a challenge that may jeopardize Forest Service's ability to provide stewardship for the forests' ecosystem services.<sup>35</sup> It is vital that Forest Service gain knowledge of land use changes that can help people and communities adjust to shifting demands on our national forest lands. Overall, we determined that Forest Service should develop a strategy to assess the impacts on the NFS, estimate the costs of these impacts on other Forest Service programs, and

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<sup>32</sup> *National Forests on the Edge*, PNW-GTR-728, August 2007.

<sup>33</sup> National Science Foundation, May 6, 2011, [http://www.nsf.gov/news/special\\_reports/ecoinf/lyme.jsp](http://www.nsf.gov/news/special_reports/ecoinf/lyme.jsp).

<sup>34</sup> *National Forests on the Edge*, PNW-GTR-728, August 2007.

<sup>35</sup> *Forest Land Conversion, Ecosystem Services and Economic Issues for Policy*, Forest Service General Technical Report PNW-GTR-797, September 2009.

prepare to prioritize the change in Forest Service's work related to land use to address these issues before the impacts rise to a critical level on our nation's forests and grasslands.

Further, Forest Service can guide its strategy by incorporating specific language that addresses the change in land use into its planning rule. The NFS planning rule provides the overarching framework for individual forests and grasslands in NFS to use in developing, amending, and revising land management plans.<sup>36</sup> On December 17, 2009, the Secretary of Agriculture announced that Forest Service was beginning an open, collaborative process to create and implement a modern planning rule to address current and future needs of the NFS. The new proposed planning rule was issued on February 14, 2011.<sup>37</sup>

We believe that the planning rule should incorporate specific language that addresses the change in use of lands both adjacent to and intermingled with national forest lands. These are lands that are currently affected by development and also lands that are at high risk for development. The Secretary of Agriculture stated in August of 2009 that the threats facing our forests do not recognize property boundaries. The reality is that 80 percent of forest area in the United States is outside the NFS. Many of our national forests are adjacent to State and private lands. The Secretary further stated that Forest Service must operate at a landscape-scale by taking an all-lands approach.<sup>38</sup> The all-lands approach should assess and identify current and future development that may impact national forest ecosystems, wildlife, invasive species, public safety, and high risk fire-prone areas. The all-lands approach can also help Forest Service become more effective, efficient, and sustainable. We believe that addressing the current residential and commercial development trends adjacent to national forest boundaries is a critical part of responsible stewardship of the NFS into the future and should be included in the new planning rule.

After a strategy has been developed and implemented, Forest Service should then incorporate performance measures into its strategic plan in order to report its progress. The Government Performance and Results Act (GPRA)<sup>39</sup> requires agencies to engage in management tasks, such as setting goals, measuring results, and reporting their progress in order to improve government management. We found that while Forest Service's strategic plan from 2007-2012 has seven strategic goals, none identify any goals or objectives that focus specifically on the impacts that have already occurred and are continuing to occur from the change in land use. During the revision of its strategic plan, the agency should determine a strategic objective for the change in land use under one of its seven strategic goals. By including the change in land use in the strategic plan, Forest Service will be better prepared to assess, track, monitor, and evaluate the issues in accordance with GPRA.

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<sup>36</sup> The Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, requires the Secretary of Agriculture to issue regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 for the development and revision of land management plans.

<sup>37</sup> 36 C.F.R., Part 219, February 14, 2011.

<sup>38</sup> Remarks by Secretary of Agriculture in Seattle, Washington on August 14, 2009.

<sup>39</sup> Government Performance and Results Act (GPRA) P.L.103-62, August 3, 1993 amended by the GPRA Modernization Act, P.L. 111-352, January 4, 2011.

A Forest Service report in 2010<sup>40</sup> determined that suburban expansion into adjacent national forest land was a leading cause of environmental and recreational losses in working forests. As the size of forests grows smaller and as private lands adjacent to and intermingled with national forest lands become fragmented, the integrity and pattern of the landscape changes, often resulting in increased fire risk, the spread of invasive species, and endangerment of natural habitats and the public. We determined that Forest Service has no extensive planning that focuses on key objectives or goals regarding the change in use of land and its impact on national forests and grasslands. In order to fulfill its stewardship mission over the nation's forests and grasslands, it is vital that Forest Service assess and monitor land use changes that can help people and communities adjust to shifting changes in land use by implementing a strategy to address the impacts occurring from the change in land use.

## **Recommendation 1**

Implement a process to assess the potential extent of changing land use on NFS and estimate the management costs of addressing this issue. As part of this process, identify any existing estimates of management costs related to changing land use.

## **Agency Response**

In their response dated January 6, 2012, Forest Service officials cited Goal 2 of the USDA Strategic Plan for 2010-2015 as describing a process to accomplish restoration objectives and protect critical lands from conversion, and noted the Department's intent to use a collaborative, "all lands" approach to bring public and private owners together across landscapes and ecosystems. They also cited the 2005 Forests on the Edge publication and Forest Service's 2007 Open Space Conservation Strategy, the Forest Service Strategic Plan for 2007-2012, and the Watershed Condition Framework of 2011 as identifying principles, strategies, and objectives to conserve open space and address impacts resulting from changing land use. They stated that these strategies and plans are implemented through the forest planning process to assess the potential extent of changing land use on NFS lands, primarily as Forest Plans are revised and resource management projects are analyzed.

However, they did not believe that an estimate of management costs would produce information that could be applied to management of the national forests, and stated that quantifying the results of different land uses on private lands and their corresponding impacts on the national forests would be highly speculative in many instances and would require a considerable investment of limited resources and personnel. They concluded that estimating such costs would be highly imprecise because the nature and extent of changing land use are only partially known at this time.

Officials stated that they would transmit the 2007 Forest Service Open Space Conservation Strategy, the USDA Forest Service Strategic Plan for FY 2007-2012, and the 2011 Watershed Condition Framework to OIG by January 31, 2011.

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<sup>40</sup> The National Report on Sustainable Forests - 2010, FS 979, issued June 2011.

## OIG Position

OIG acknowledges that Forest Service has various strategies in place to accomplish land restoration and address various issues cited in this report such as fire safety and pest management, and to slow the rate of changing land use through acquisitions of lands adjacent to the NFS. However, these are broad strategies and not all of them (e.g., the USDA 2010-2015 Strategic Plan) are specific to the Forest Service. Without a coherent process to coordinate and focus these strategies, we question how these will enable Forest Service officials to estimate either the probable impacts on the NFS of changing uses in the surrounding lands, or the resources needed to address such impacts.

The response also noted that estimating such costs would be highly imprecise because the nature and extent of changing land use are only partially known at this time. However, this lack of information is one of the issues that our recommended process was intended to address. Although we agree that any cost estimates would be subject to change because they are influenced by factors outside of Forest Service's control, it must also be pointed out that any strategy to address the issues cited in this finding must take into account the probable management costs and resources that will be needed.

To reach a management decision, Forest Service officials need to provide a clarification of the process by which the various cited strategies will be used to assess the potential extent of changing land use. The requested clarification should also address how, in the absence of management cost estimates, the agency will be able to identify on a nationwide basis what resources are needed, or to determine whether additional resources would need to be requested from Congress. Finally, if the process described in the subsequent response has not yet been implemented, agency officials should provide the timeframes within which it would be implemented.

## Recommendation 2

Develop specific goals, strategies, and timeframes for addressing the impacts of changing land use during the next strategic planning cycle in accordance with Forest Service's strategic plan to sustain the nation's natural resources.

## Agency Response

In their response dated January 6, 2012, Forest Service officials stated that they had in place goals, strategies, and objectives to provide sustainable stewardship over NFS land impacted by changing land use. In support of this, they cited the following:

- The *USDA Forest Service Strategic Plan for FY 2007-2012* provides strategic direction that guides Forest Service in delivering its mission. It also provides the agency's framework for establishing goals, objectives, and performance measures as well as strategies for management of the NFS. Specifically, Goal 3 is to conserve open space and one of the strategies of this goal is to "...coordinate national forest plan revisions with local land use plans to minimize the impacts of new and existing developments on

NFS resources and management activities.” Another goal is to “...monitor land use change and develop tools to predict and evaluate the interaction between public lands and other ownerships across the rural-urban continuum.”

- The *Forest Service Open Space Conservation Strategy* provides 4 priority actions and 13 supporting actions for strengthening the conservation of open space.

Forest Service officials also noted that the Forest Legacy Program has reached the 2-million acre milestone of protecting private forests from development in perpetuity, and they disagreed with the report’s contention that “...this type of program does not address the issues that arise when such lands are sold by their original owners for residential or commercial development.” They stated that this program achieves its goals primarily through the acquisition of conservation easements in perpetuity from willing landowners; these easements are permanent, and successor landowners are bound by them and are precluded from future residential or commercial development.

## **OIG Position**

It was not OIG’s intention to suggest that the Forest Legacy Program does not provide permanent protection for lands that are acquired under that program. Accordingly, we have changed that passage in the final report. Our concern was not with commercial or other development on lands acquired through the Forest Legacy Program, but rather with such development on NFS-adjacent lands which Forest Service is not able to acquire. Inevitably, some of the newly-acquired lands themselves will be impacted by development on privately-owned lands that are adjacent to them. We support Forest Service’s use of the Forest Legacy Program to as one means of addressing the issues and impacts related to changing land use; however, we do not believe that this program alone is sufficient to mitigate the impacts to NFS lands caused by changing land use on nearby privately-owned lands.

We agree that both the Forest Service Strategic Plan for 2007-2012 and the Forest Service Open Space Conservation Strategy contain goals that are relevant to the issues of land stewardship and changing land use. However, even the listed “Means and Strategies for Accomplishing Goal 3” are general in nature and in several cases are contingent upon the development of more specific strategies for their implementation. For instance, one of the items listed under the Means and Strategies calls upon Forest Service to “...develop tools to predict and evaluate the interaction between public lands and other ownerships...” Another would require Forest Service to “...develop and disseminate management strategies to mitigate habitat loss and fragmentation impacts on plant and animal communities...” Forest Service’s timeline for both objectives under Goal 3 was to impact 2 million acres by 2012, but we do not believe this can be met if the specific tools for their implementation have not been completed.

To reach a management decision on this recommendation, Forest Service officials need to provide additional clarification on the specific goals and strategies needed to address the impacts of changing land use – such as those referenced in the Means and Strategies section under Goal 3 of the Strategic Plan – as well as the timeframes under which these would be implemented.

### **Recommendation 3**

Provide appropriate assurance that the new planning rule addresses the change in land use for reducing the potential ecological impacts and risks from development.

#### **Agency Response**

In their response dated January 6, 2012, Forest Service officials noted that their authority to regulate and restrict land uses on private land, including those within NFS boundaries, is limited. Local and State zoning and land use regulations typically govern the use of private lands within their respective boundaries. As an example, they stated that Forest Service cannot preclude a timber company from selling its land to a developer for residential development, nor can it revoke or unilaterally amend the terms of a FRTA easement originally issued to a timber company. They concluded that changes in land use on private land are, generally speaking, outside the agency's authority, and noted that due to the sensitivity of many communities to the perception that Forest Service may be infringing on the rights of private landowners, local officials frequently take extra measures to assure local government that the agency does not do this. They stated, however, that they would provide a copy of the new planning rule highlighting relevant sections.

#### **OIG Position**

We recognize that Forest Service has little or no direct control over what happens on privately-owned lands adjacent or near to the NFS; that is why we believe that any workable strategy should concentrate on mitigating the impact *on NFS lands* when development occurs on adjacent privately-owned land. However, Forest Service can also pursue strategies that involve timber cooperators and private landowners as cooperative partners; the ongoing initiative to persuade timber cooperators to enter into agreements that amend the pre-1994 FRTA easements is one example of this.

To reach a management decision, Forest Service officials need to provide a response that addresses these concerns. Based on the response, we could not determine the extent to which the new planning rule which Forest Service officials have agreed to provide by April 30, 2012, may accomplish this.

## Section 2: Ownership Changes

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### Finding 2: Forest Service Needs to Address FRTA Ownership Changes by Its Guidance and Oversight

Uncertainty regarding FRTA easement management has created disputes and confusion between landowners, local Forest Service personnel, and the WO. These problems have occurred because Forest Service has not provided sufficient clarification, guidance, or oversight either to the new residential landowners or to local forest personnel on how to adapt appurtenant FRTA easements to their new residential uses both before and after timber companies sell these lands for commercial and residential development. In the absence of a clear, communicable interpretation of FRTA easement language at the time of purchase, landowners often do not understand their responsibilities and limitations and frequently damage the roads through unauthorized maintenance operations. Because local forest personnel likewise lack an understanding of how to enforce landowners' cost sharing responsibilities, in some instances, they either do not take action to address situations with successor landowners when they arise, or else take actions that conflict with WO officials' interpretations of agency landownership policy. Further, because the WO has not conducted the necessary reviews on the cost share program, it is not always aware of the needs of field personnel or the appropriate measures to ensure the cost share program addresses the changes in ownership.

Forest Service personnel at the local forest level have the primary responsibility of ensuring that: 1) FRTA roads are properly maintained as per the cooperative agreements;<sup>41</sup> 2) costs of maintenance are paid as required under the cooperative agreements;<sup>42</sup> and 3) FRTA roads are administered in the best interests of the government, landowners, and the public<sup>43</sup> by working with timber cooperators and other landowners.<sup>44</sup> WO officials are responsible for ensuring that local field personnel have the necessary guidance to perform these tasks.<sup>45</sup> They are also responsible for providing sufficient oversight to ensure that policies and procedures are correctly and consistently followed.<sup>46</sup>

We found three deficiencies with how Forest Service was addressing FRTA easement ownership changes. First, when dealing with landowners before the purchase of forest lands, Forest Service has not made further attempts since the unsuccessful 2006-2009 initiative to clarify vague, pre-1994 FRTA easement language. Likewise, Forest Service has not clearly communicated to successor landowners its expectations on the maintenance of FRTA roads. Second, when dealing with successor landowners after forest land had been purchased, we found that Forest Service has not determined how to respond to issues involving road maintenance and cost share division for landowners not under FRTA easement agreements. Finally, the WO has neither

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<sup>41</sup> Forest Service Manual 7732.04 (c).

<sup>42</sup> Forest Service Manual 5467.61.

<sup>43</sup> The Multi-Use Sustained Yield Act (MUSYA) of 1960, Public Law 86-517, June 12, 1960, Section 4.

<sup>44</sup> Forest Service Manual 5467.04 (d).

<sup>45</sup> Forest Service Manual 1940.44.

<sup>46</sup> Forest Service Manual 5467.04 (a).

assessed nor addressed the condition of local cost share programs nor their needs in dealing with successor landowners.

*Forest Service Should Amend Pre-1994 FRTA Easement Language and Communicate with Local Landowners*

When timber cooperators sell their land to developers, Forest Service officials and staff explained that the subsequent landowners are sometimes either unclear on or unaware of their rights and restrictions in maintaining the FRTA roads. Forest Service officials also explained that this is often the result of the unclear, pre-1994 FRTA easement language, whose wording allows for multiple and often conflicting interpretations. Further, Forest Service has not taken sufficient steps to clarify these easements and communicate their rights and responsibilities to these successor landowners. As a result, Forest Service's mission to manage the roads is jeopardized and Forest Service faces public scrutiny. Because timber cooperators are selling their land at increasing rates, it is crucial that Forest Service clarify pre-1994 FRTA easement language before forest land is sold to successor landowners.

In one notable instance in 2006, a large timber cooperator was preparing to sell 640 acres to a developer. Disagreements arose between the developer who wanted to purchase the 640 acres and Forest Service over the rights of successor landowners to use the existing roads under appurtenant FRTA easements as residential access roads. As a result, a controversy arose concerning road rights for FRTA easements. In an effort to avoid litigation and end the controversy over rights and responsibilities under the pre-1994 FRTA easement agreements, Forest Service and the timber cooperator, the owner of the 640 acres at the time, met to develop an amendment between the two parties that would clarify the language of their FRTA easement agreement. Once signed by both parties, the resulting agreement would be binding on any subsequent purchasers on the property. To avoid the prospect of attempting to individually negotiate such agreements with numerous small landowners, Forest Service officials recognized the need to work proactively toward getting the agreement signed before the land was sold. According to Forest Service officials, this FRTA easement amendment, if successfully implemented, would have been a template for all cost share forests to use. There were two substantive clarifications mentioned in the amendment:

- While it did not prohibit residential access use of the roads as did the language written in the post-1994 FRTA agreements, this easement amendment did require significant stewardship actions on the part of the successor landowners by requiring them to protect the health of the forests, provide for road maintenance, firewise<sup>47</sup> their properties, and release Forest Service from liability for the residential use of these roads. Forest Service was recognized as the manager for all shared roads, with final authority to approve or disapprove any maintenance or modifications performed by successor landowners.

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<sup>47</sup> The National Fire Protection Association's (NFPA) Firewise Communities program encourages local solutions for wildfire safety by involving homeowners, community leaders, developers, firefighters, and others in an effort to protect people and property from the risk of wildfires.



- The easement amendment also encouraged the creation of a road users association for each residential subdivision using FRTA roads for residential access. This would allow local forest officials to deal with a single large entity – the road users association – instead of numerous small landowners when addressing issues or disputes revolving around the maintenance of the FRTA roads. Further, the road users associations created by the amendments would be better suited to work with Forest Service in keeping the roads maintained – either through agreements under which Forest Service would perform necessary maintenance functions directly or, with Forest Service’s approval, by obtaining professional snowplowing and other services. The road users associations could also be required by Forest Service to be bonded for any damages that may result from improper snowplowing or other maintenance functions.

Although the proposed easement amendment represented a proactive effort to address both the financial and ecological impacts to the nation’s forests, Forest Service was unable to implement it. During negotiations with the cooperator, a local community objected to the proposed amendment. Because they were clarifying ambiguous language of the existing easement rather than creating a new easement, Forest Service officials did not solicit public comment nor require the timber cooperator to obtain an Environmental Impact Statement under the National Environmental Protection Act (NEPA).<sup>48</sup> The local community, however, protested strongly on both of these counts. As a result, Forest Service requested the USDA Office of the General Counsel (OGC) to analyze the intent of the FRTA language. OGC stated on April 22, 2008, that the FRTA language did not prohibit the residential use of these roads. In the course of our audit, Forest Service officials stated that, in the future, they intended to obtain public comment from local communities to avoid conflicts and misunderstandings. The timber cooperator withdrew from the process and the prototype easement amendment was never finalized or implemented. No further action has been taken since 2009 when the easement amendment negotiations were halted.

We support the initiative taken by Forest Service officials to develop a template easement amendment, and we believe that this proactive approach could provide Forest Service with an important tool to assist in addressing the complex issues resulting from changing land use. Forest Service officials should initiate a national-level process to analyze and address the issues that caused the first attempt at a FRTA easement amendment to fail. Once the initial template agreement is in place, Forest Service should act expeditiously to implement the FRTA easement amendment with cooperators wherever possible to minimize the impact of changing land use on the road systems shared by Forest Service and successor landowners. Finally, Forest Service should implement a system of outreach to current and future landowners to inform them of their rights and responsibilities with respect to FRTA cost share roads.

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<sup>48</sup> OIG’s Office of Counsel expressed an opinion on September 30, 2009, that NEPA did require an Environmental Impact Statement to be performed in such cases. However, an attorney with the Office of the General Counsel stated that it is possible FS could write a regulation requiring only a single, programmatic EIS, and this would be part of the process of finalizing the original template agreement. It would not be necessary for subsequent agreements using the same template.

### *Forest Service Should Communicate to Field Personnel How to Address Landowner Disputes*

While a FRTA easement amendment would clarify successor landowner rights and responsibilities before landowners acquire the land, local Forest Service staff told us that the WO officials have not communicated to field personnel how to implement and enforce landowner rights and responsibilities after landowners have already purchased the land. Though WO officials generally believed that existing guidance was sufficient, local forest personnel believed that more guidance from the WO would have helped them to address continual disputes between Forest Service and landowners. Personnel at one national forest, including the forest supervisor and cost share specialist, stated that they were unable to respond to increased incidents of improper road maintenance because much of the guidance in the Forest Service Manual was not applicable to the types of problems they encounter with successor landowners. They said that, at best, it takes additional time for them to determine what needs to be done. Some local forest personnel stated unless a situation is particularly serious, they may not take action at all.

Forest Service officials at both the WO and local levels have agreed that they often have differing views of how successor landowners should maintain FRTA roads and how existing guidance in the Forest Service Handbook should be adapted to these issues. One WO official stated that once easements pass out of the hands of timber cooperators, Forest Service's objective is to only maintain and plow the roads to the level needed by Forest Service or any remaining timber cooperators still using the roads; such needs would include timber hauling by large trucks, normal access by Forest Service vehicles, or recreational trail usage. On the other hand, WO officials also have stated that in cases where Forest Service only uses a road once every several years, it would be more appropriate for the successor landowners, who use the road daily, to take over both the cost and the responsibility for performing road maintenance.

To effectively address these rising road maintenance issues, we believe Forest Service should coordinate at both the WO and local forest levels to establish guidelines for field staffs to follow in addressing issues regarding successor landowners' use and maintenance for these FRTA roads. Forest Service should communicate those interpretations and guidelines to all applicable field staffs.

### *Forest Service Needs to Provide Adequate Oversight and Review for the Cost Share Program in Order to Assess and Meet Its Needs*

Though it is apparent that cost share personnel are uncertain how to apply cost share principles to landowners that are not under a cooperative agreement, the WO has not assessed the extent to which cost share personnel are prepared to handle issues revolving around residential successors to FRTA easements. This continues because WO officials consider the cost share program to be a low priority and have not provided adequate oversight and guidance for the cost share program. WO officials are responsible for developing policy to monitor regional activity and to provide oversight.<sup>49</sup> Forest

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<sup>49</sup> Forest Service Manual 1940.44.

Service's Chief has the responsibility to monitor and evaluate the effectiveness of the cost share program in meeting the needs of Forest Service.<sup>50</sup> Beginning in FY 1995, the NFS Deputy Chief was required to review the cost share program every 5 years.<sup>51</sup> Only one such cost share review was performed in 2003. The results of this review would have been helpful in assessing the condition and needs of the cost share program; however, these results were never shared with management due to other Forest Service priorities. We believe Forest Service should continue to make these efforts. Such reviews, if completed at the required intervals, could serve as one means for WO officials to familiarize themselves with the issues local forest personnel face in their attempts to administer FRTA roads.

One issue identified in the 2003 review was the loss of necessary skills related to the cost share program and FRTA easements. During our audit, we also noted that the retirement of a key cost share specialist in 2008, with broad responsibilities and extensive cost share expertise, has greatly contributed to the lack of oversight and guidance of the cost share program. This official provided nationwide oversight of the cost share specialists located in the field and carried the responsibility both of reviewing the work of cost share specialists in various field locations and of certifying specialists as being sufficiently knowledgeable in the cost share program. Of the 11 cost share specialists in field offices at the time of our audit, only 4 had been certified as possessing sufficient expertise and knowledge in all the processes and procedures for the cost share program. The retired employee who previously held this position also served as both a liaison to the WO and an expert in answering technical questions from local forest personnel.

In order to coordinate efforts between the WO and local field staffs, a liaison with the proper oversight authority is necessary to guide Forest Service's decisions regarding the cost share program and FRTA easements. WO officials agreed with the need for such a position and during the audit developed a new WO cost share position, the Program Manager for Landownership/Policy. The duties of this position include reviewing and updating all cost share procedures, forms, reports, and training for the field staffs that perform the cost share work in all of the regions and forests. Forest Service officials advised us that the position was filled in March 2011.

If allowed to continue unchecked, the confusion regarding Forest Service's FRTA easement language and cost share policies could continue to negatively impact the management of FRTA roads, causing potentially costly damages. Landowners will not understand their rights and responsibilities as outlined in FRTA easement language nor will Forest Service personnel know how to appropriately respond to the various situations that occur. In the course of our audit, we found instances such as the three discussed below.

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<sup>50</sup> Forest Service Manual 5467.04a.

<sup>51</sup> Forest Service Manual 5467.06a.

- In one instance, a local Forest Service cost share specialist explained that a landowner plowed snow from a cost share road but did not allow for adequate drainage. Rains that occurred just after the plowing caused approximately \$142,000 in damage (see figure 1). The cost share specialist stated that the landowner did not understand his rights and responsibilities as stated in the language in the FRTA easement. He did not realize that he needed to obtain prior approval from Forest Service to perform such maintenance and had to perform it in accordance with Forest Service standards and specifications. The local forest personnel did not know whether it was feasible to hold the landowner monetarily liable for the \$142,000 of damage that resulted. Instead, the damage to the road was paid for by obtaining funds from the Federal Highway Administration's Emergency Relief for Federally Owned Roads Program.
- In another situation, a cost share specialist told us that a landowner applied a dust abatement treatment on a FRTA road without Forest Service's authorization. A neighboring landowner, who disagreed with the first landowner's action, had the road scraped to remove the treatment. The improper scraping of the road, performed again without Forest Service's knowledge or approval, caused damage to the road which local forest staff estimated would require between \$2,000 and \$3,000 in repairs. The local forest personnel did not attempt to assess either landowner for the cost of the repairs because of the small dollar amount involved. However, they also did not take action to repair the road, to cite either landowner for violating the easement requirements, or to seek monetary penalties to deter other landowners in the area from performing unauthorized roadwork. The cost share specialist stated that they were uncertain what actions they could take against the landowners and whether or not they should initiate repairs on the road before that issue was settled. We discussed this case with WO officials, who stated that the field staff should have cited the landowner who damaged the road<sup>52</sup> and should have taken independent action to repair the road.
- In a third instance, a landowner installed a driveway that tied into a FRTA easement road without obtaining authorization from Forest Service. The local cost share specialist said the improperly graded driveway caused drainage problems that resulted in excessive erosion and damage to the easement road and its culverts. The cost share specialist said the landowner should have obtained an Approach Consent Agreement<sup>53</sup> before performing the work which would clearly state the standards and specifications for tying into a Forest Service road and would also allow the agency to hold the landowner financially liable for any damages incurred. The local forest personnel were uncertain of what actions they could take. As a result, the local Forest Service staff neither sought monetary penalties nor requested the landowner to sign an Approach Consent Agreement to ensure the driveway would be properly graded in order to avoid further damage to the cost share road.

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<sup>52</sup> Regulation 36 CFR 261.12 (c) states that blocking, restricting, or otherwise interfering with the use of a road, trail, or gate is prohibited.

<sup>53</sup> Region 6 Supplement 5409.17, effective October 15, 1991.



**Figure 1: Damage created by a landowner improperly snowplowing Forest Service Road 6910 in the Wenatchee-Okanogan Forest in November, 2008. Photo is courtesy of Forest Service.**

We concluded that Forest Service officials should continue to pursue their efforts to clarify the FRTA easement language and inform successor landowners of their specific rights and responsibilities for the maintenance of FRTA roads prior to purchase of the land. Further, Forest Service officials should inform applicable forest personnel about how to deal with landowner disputes once the land has been purchased. Finally, the WO should review the cost share program and provide the appropriate oversight to ensure that local personnel have the resources and abilities to carry out Forest Service’s responsibilities for managing FRTA roads.

#### **Recommendation 4**

Clarify the process for analyzing and addressing the issues of whether (1) the negotiations with timber cooperators for a FRTA easement amendment should be a public process, and (2) an Environmental Impact Statement needs to be completed under NEPA before an easement amendment can be finalized and implemented.

#### **Agency Response**

In their response dated January 6, 2011, Forest Service officials stated that the former Under Secretary requested a legal opinion from the Office of the General Counsel during their negotiations for an easement amendment with the large timber cooperator cited in the report. The opinion, issued on April 22, 2008, stated that since Forest Service was not increasing the scope of the original grant, neither an EIS nor public comment was required. Officials stated that as the agency develops language for FRTA easements, they will continue to consult with OGC

regarding NEPA and their public involvement responsibilities. They stated that they will ensure compliance with these requirements regarding any FRTA easement amendments that might be developed.

### **OIG Position**

We accept Forest Service's management decision.

### **Recommendation 5**

Initiate a time-phased process to complete the development of a template easement amendment that includes a road user's association agreement and implement these wherever possible with timber cooperators before they sell their land for residential development or commercial use.

### **Agency Response**

Forest Service officials agreed with the recommendation, and stated that they would work toward the development of a standard road use agreement specifically for use with homeowners associations. The road use agreement will ensure that homeowners associations meet their maintenance obligations and responsibilities on NFS roads that access private residential land. They stated that they will attempt to implement the standard agreement whenever circumstances warrant, recognizing that Forest Service does not have the authority to compel timber cooperators to amend existing agreements. They stated that the template easement agreement will be completed by December 31, 2012.

### **OIG Position**

We accept Forest Service's management decision.

### **Recommendation 6**

Establish consistent guidelines for field staffs to follow regarding residential successors to FRTA easements. Determine how the existing cost share policies should be applied to those successors and communicate those determinations to all applicable field staff.

### **Agency Response**

In their response dated January 6, 2012, Forest Service officials concurred with the recommendation and stated that this will be documented in a clarification of Forest Service policy specific to cost-share roads. The clarification will be issued by December 31, 2012.

### **OIG Position**

We accept Forest Service's management decision.

## **Recommendation 7**

Revise cost share evaluation guidance to include requirements for specific coverage and number of regions/forests/districts to review, and to require for each evaluation that a timeline be established to implement recommendations and to follow up on previous evaluation results.

## **Agency Response**

In their response dated January 6, 2012, Forest Service officials concurred with the recommendation and stated that this will be documented in a clarification of Forest Service policy specific to cost-share roads. The clarification will be issued by December 31, 2012.

## **OIG Position**

We accept Forest Service's management decision.

## Scope and Methodology

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We performed our audit at Forest Service Headquarters in Washington, D.C. and Regional offices located in Vallejo, California, and Portland, Oregon. The Regional offices were selected because of the large cooperators owning land in the regions. We also visited the Tahoe and Okanogan-Wenatchee national forests in California and Washington, respectively. We selected these National Forests because Forest Service WO and Regional officials stated the forests had many new residential developments that were impacting the management of the forests. We evaluated Forest Service's efforts to manage FRTA easements on cost share roads and Forest Service's processes to manage the impacts to the national forests caused by the changing use of forest lands, specifically from timber management to residential development. The scope of our audit was from 2004 to 2010, and other years as deemed necessary. We conducted our fieldwork from February 2009 through September 2010.

To accomplish our objectives we performed the following:

- We interviewed Forest Service Headquarter and Regional office staffs and analyzed pertinent documents, processes, and reports relating to the granting of easements. We also analyzed the staffing and budget levels for the Lands and Realty Program over the past 10 years.
- We interviewed Forest Service officials and staff at two national forests to determine concerns and impacts occurring on national forest land because of land use change.
- We interviewed the Office of the General Counsel (OGC) officials in Washington, D.C. to understand the legal implications of FRTA easements and OGC's analysis of FRTA easement language.
- We also interviewed officials of outside entities, including timber cooperators, non-profit entities, and local government officials.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States. Those standards required that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.



## Abbreviations

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EIS.....	Environmental Impact Statement
FRTA .....	Forest Roads and Trails Act of 1969
FS .....	Forest Service
FY .....	Fiscal Year
GPRA .....	Government Performance Results Act
NF .....	National Forest
NFS .....	National Forest Service
NEPA .....	National Environmental Policy Act of 1969
OGC .....	Officer of the General Counsel
OIG .....	Office of Inspector General
USDA.....	Department of Agriculture
WO.....	Washington Office
WUI.....	Wildland Urban Interface

**USDA'S  
FOREST SERVICE  
RESPONSE TO AUDIT REPORT**





Forest  
Service

Washington  
Office

1400 Independence Avenue, SW  
Washington, DC 20250

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**File Code:** 1430

**Date:** January 6, 2012

**Route To:**

**Subject:** Response to Audit Report No. 08601-1-Ch Evaluating FS Processes to Acquire and Grant Rights-of-Way and Easements

**To:** Gil H. Harden, Assistant Inspector General for Audit

In response to Audit Report No. 08601-1-Ch “Evaluating Forest Service Processes to Acquire and Grant Rights-or-Way and Easements,” the enclosure outlines our proposed actions for each of the audit recommendations.

Please contact Donna Carmical, Chief Financial Officer at (202) 205-1321 or [dcarmical@fs.fed.us](mailto:dcarmical@fs.fed.us) if you have additional questions.

*/s/ Thomas L. Tidwell*  
THOMAS L. TIDWELL  
Chief

Enclosure



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**USDA Forest Service (FS)**

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**Office of Inspector General (OIG) Official Draft Audit Report No. 08601-1-Ch  
Evaluating FS Processes to Acquire and Grant Rights-of-Way and Easements**

**Management Decision**

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**OIG Recommendation No. 1:** Implement a process to assess the potential extent of changing land use on NFS and estimate the management costs of addressing this issue. As part of this process, identify any existing estimates of management costs related to changing land use.

**FS Response:** Goal 2 of the *USDA Strategic Plan 2010-2015* describes a process to accomplish restoration objectives and protect critical lands from conversion. “The Department will use a collaborative, ‘all lands’ approach to bring public and private owners together across landscapes and ecosystems.” In addition, the 2005 report *Forests on the Edge* seeks to improve understanding of the processes and thresholds associated with increases in housing density in private forests and the likely effects to timber, wildlife, and water resources on those forests. The *Forest Service Open Space Conservation Strategy* (2007), *USDA Forest Service Strategic Plan FY 2007-2012*, and the *Watershed Condition Framework* (2011) all identify principles, strategies, and objectives to conserve open space and address impacts resulting from changing land use.

The strategies and plans described above are implemented through the forest planning process to assess the potential extent of changing land use on the National Forest System (NFS) lands, primarily as Forest Plans are revised and resource management projects are analyzed. The new planning rule to be finalized in 2012 will require: 1) identification of a unit's role and contribution within the context of the broader landscape; and 2) consideration of the landscape scale context for multiple use management of NFS lands and land ownership and access patterns relative to the plan area. Refinements of these requirements are under consideration for the final planning rule, so that it would require: 1) identification and evaluation of land status and ownership, use, and access patterns in assessments; and 2) consideration of these matters when developing plan components. This consideration would include those areas where private lands are intermingled or located within the boundary of a National Forest and access is provided by an appurtenant cost share road.

A cost estimate of changing land uses on non-NFS lands adjacent to or within the national forests is not viable or likely to produce information that the Forest Service could apply to management of the national forests. Quantifying the results of different land uses on private lands and their corresponding impacts to the national forests would be highly speculative in many instances, would require a considerable investment of limited resources and personnel, and would not likely produce actionable information.

Estimating such costs would be highly imprecise because the nature and extent of changing land use are only partially known at this time.

**Estimated Completion Date:** This Recommendation will be completed upon transmittal of the *Forest Service Open Space Conservation Strategy (2007)*, *USDA Forest Service Strategic Plan FY 2007-2012*, and the *Watershed Condition Framework (2011)* to OIG January 31, 2012. Per the above response, no estimate of management costs will be provided to OIG. A closure request will be included for this recommendation when these materials are transmitted.

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**OIG Recommendation No. 2:** Develop specific goals, strategies, and timeframes for addressing the impacts of changing land use during the next strategic planning cycle in accordance with Forest Service's strategic plan to sustain the nation's natural resources.

**FS Response:** The Forest Service has in place goals, strategies and objectives to provide sustainable stewardship over NFS land impacted by changing land use. These actions are guided by the *Forest Service Open Space Conservation Strategy (2007)*, *USDA Forest Service Strategic Plan FY 2007-2012*, and the *Watershed Condition Framework (2011)*. All these plans identify principles, strategies, and objectives to conserve open space and address impacts resulting from changing land use. The strategies and goals are being incorporated into each Forest Plan as each Forest Plan is revised.

The *USDA Forest Service Strategic Plan FY 2007-2012* provides the strategic direction that guides the Forest Service in delivering its mission. Programs and budgets are aligned with the goals and objectives in the strategic plan. Through State foresters, Indian tribes, and other partners the Forest Service provides financial and technical assistance to help forest landowners manage their lands for sustainability.

Further, the *Forest Service Open Space Conservation Strategy (2007)* provides 4 priority actions and 13 supporting actions for strengthening the conservation of open space. The Forest Service Strategic Plan provides the agency's framework for establishing goals, objectives, and performance measures as well as strategies for management of the National Forest System, as required under the Government Performance and Results Act of 1993, which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1975, as amended by the National Forest Management Act.

The draft audit states that "We found that while Forest Service's strategic plan from 2007-2012 has seven strategic goals, none identify any goals or objectives that focus specifically on the impacts that have already occurred and are continuing to occur from the change in land use." The documents provided state the goals and objectives that specifically address development, change in land use, and open space conservation. Specifically, Goal 3 is conserve open space and one of the strategies of this goal is to "Coordinate national forest plan revisions with local land-use plans to minimize the impacts of new and existing developments on NFS resources and management activities." Another goal is to "Monitor land use change and develop tools to predict and evaluate the interaction between public lands and other ownerships across the rural-urban continuum."

The Forest Legacy Program has reached the two million acre milestone of protecting private

Forests from development in perpetuity. The OIG audit asserts that “this type of program does not address the issues that arise when such lands are sold by their original owners for residential or commercial development”. Actually the Forest Legacy Program does address future use of lands subject to conservation easements acquired on these lands. The Legacy Program achieves its goals primarily through the acquisition of conservation easements in perpetuity from willing landowners. Conservation easements under the Forest Legacy Program are permanent; successor landowners are bound by the easements and are precluded from future residential or commercial development.

**Estimated Completion Date:**

This Recommendation will be completed upon transmittal of the *Forest Service Open Space Conservation Strategy* (2007), *USDA Forest Service Strategic Plan FY 2007-2012*, and the *Watershed Condition Framework* (2011) to OIG by January 31, 2012, and a closure request will be included for this recommendation with these materials.

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**OIG Recommendation No. 3:** Provide appropriate assurance that the new planning rule addresses the change in land use for reducing the potential ecological impacts and risks from development.

**FS Response:** The Forest Service will provide the USDA Office of the Inspector General a copy of the new planning rule highlighting relevant sections.

Forest Service authority to regulate and restrict land uses on private land, including private lands within National Forest System boundaries, is limited. Local and state zoning and land use regulations typically govern the use of private lands within their respective boundaries. The FS cannot, for example, preclude a timber company from selling its land to a developer for residential development and similarly the Forest Service cannot revoke or unilaterally amend the terms of a FRTA easement originally issued to a timber company. In addition, the Forest Service could exceed its authority to expend federal appropriations in violation of federal law if it were to engage in management planning, monitoring, and corrective actions outside of lands within its administrative jurisdiction.

Changes in land use *on private land* are, generally speaking, outside the authority of the Forest Service. In fact, in the western United States where the Forest Service is often the largest land owner in an area, local communities tend to be highly sensitive to any perception the Forest Service is infringing on private property rights. Local Forest Service officials frequently take extra measures to assure local government that the Forest Service does not and will not interfere with the rights of private landowners.

**Estimated Completion Date:** This Recommendation will be completed upon transmittal of the new planning rule to OIG by April 30, 2012. A closure request will be included for this recommendation with these materials.

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**OIG Recommendation No. 4:** Clarify the process for analyzing and addressing the issues of whether (1) the negotiations with timber cooperators for a FRTA easement amendment should be a public process, and (2) an Environmental Impact Statement needs to be completed under NEPA before an easement amendment can be finalized and implemented.

**FS Response:** This recommendation was addressed in 2008 during negotiations the Forest Service was engaged in regarding an easement amendment with Plum Creek. Undersecretary Mark Rey requested a review of the law regarding cost share easements. The opinion of the Office of the General Counsel dated April 22, 2008, entitled *Legal Considerations for Amendments to Reciprocal Cost-Share Easements between the Forest Service and Nonfederal Land Owners*, concluded with respect to possible amendments to FRTA easements that **“Since the Forest Service was not increasing the scope of the original grant, there was no requirement for environmental analysis or public comment.”** Specifically, the original FRTA easement was granted for *all purposes* the grantee deemed necessary or desirable to protect, manage, and utilize its lands. Therefore, there is no NEPA requirement for an amendment to the easement that does not expand the scope of the original authorization.

Nevertheless, as the Forest Service develops amendment language for FRTA easements, the agency will continue to consult with OGC regarding its NEPA and public involvement responsibilities. In addition, the Forest Service, as with any agency action, will ensure compliance with applicable NEPA and public involvement requirements regarding any FRTA easement amendments that might be developed.

**Estimated Completion Date:** A copy of OGC’s April 22, 2008, Opinion is attached. The Forest Service requests that this recommendation be closed.

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**OIG Recommendation No. 5:** Initiate a time-phased process to complete the development of a template easement amendment that includes a road user’s association agreement and implement these wherever possible with timber cooperators before they sell their land for residential development or commercial use.

**FS Response:** The Forest Service agrees with this recommendation. The easement amendment proposed in 2008 with Plum Creek will be considered as the agency reviews possible language for developing an amendment for pre-1994 FRTA easements. The Forest Service will work toward the development of a standard road use agreement specifically for use with a homeowners association. The road use agreement will ensure the homeowner association meets its maintenance obligations and responsibilities on NFS roads that access private residential land. The Forest Service will attempt to implement the standard agreement whenever circumstances warrant, recognizing that the Forest Service does not have the authority to compel timber cooperators to amend existing easements.

OIG states that “implementing an easement amendment to clarify ambiguous pre-1994 FRTA easement language, Forest Service can reduce the number of costly repairs to FS lands and roads.” While this may be true the Forest Service has no authority over private land nor can the Forest Service compel holders of FRTA easements to accept an easement amendment. Further,



the Forest Service respects private property rights and local jurisdiction over land use and only works with willing landowners.

**Estimated Completion Date:** By December 31, 2012, the Forest Service will have completed the development of a template easement amendment that includes a road user's association agreement. Implementation of these documents will depend upon agreement by individual cooperators.

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**OIG Recommendation No. 6:** Establish consistent guidelines for field staffs to follow regarding residential successors to FRTA easements. Determine how the existing cost share policies should be applied to those successors and communicate those determinations to all applicable field staff.

**FS Response:** The Forest Service concurs with this recommendation. This will ultimately be documented in a clarification of Forest Service policy specific to cost-share roads.

**Estimated Completion Date:** December 31, 2012.

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**OIG Recommendation No. 7:** Revise cost share evaluation guidance to include requirements for specific coverage and number of regions/forests/districts to review, and to require for each evaluation that a timeline be established to implement recommendations and to follow up on previous evaluation results.

**FS Response:** The Forest Service concurs with this recommendation. This will ultimately be documented in a clarification of Forest Service policy specific to cost-share roads.

**Estimated Completion Date:** December 31, 2012.

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Informational copies of this report have been distributed to:

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Director, Planning and Accountability Division

Thelma Strong, Acting Chief Financial Officer, Forest Service (1)

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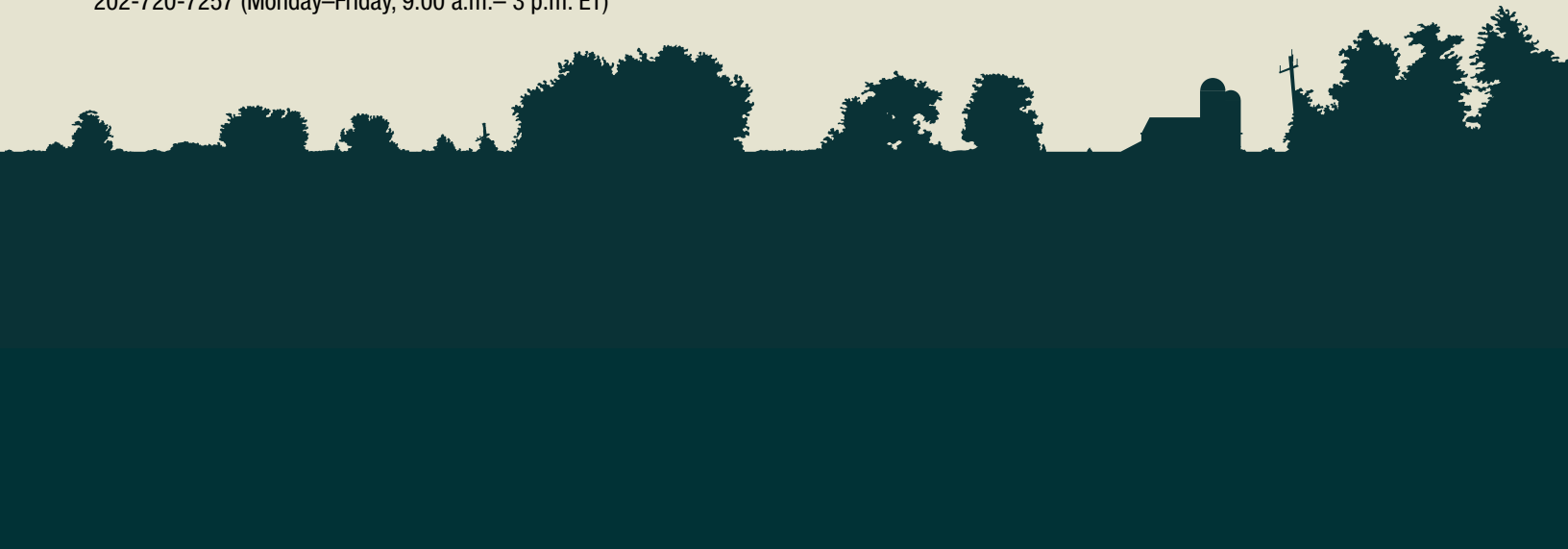
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