Acquisition of Federal Lands

- Bob Heiser
- Special Programs Manager
- Right of Way Bureau, MDT
- Presentation assisted by Boyd Darlow, MDT Right Of Way Agent
United States Forest Service

- 154 national Forests
- 20 national grasslands
- 193 million acres
- 9 Regions
• 80% of land managed by the USFS is in the western states
• 17 million acres of USFS in Montana
• 18% of Montana or about the size of South Carolina
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Pre-Application

• After the Right-of-Way Plans/Design Section authorizes right-of-way acquisition for a project, the Helena Acquisition Agent reviews the plans and parcel ownership to determine which Federal agency has jurisdiction over the public domain involved.
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• If necessary, the assigned Right Of Way Agent verifies with the BLM office in Billings that the Forest Service has jurisdiction of the lands to be acquired and checks the plans for the following information:
  • control of access delineation, if applicable;
  • North arrow, meridian, township, range and section;
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- bearing basis, centerline data (e.g., curve elements, bearing, length of tangent);
- surveyed, calculated or scaled ties to centerline at each Forest Service property boundary; right-of-way limits;
- section lines, section numbers and subdivision of sections (e.g., 40 acre or lots); and, shaded area of easement taking.
- Previous recorded highway easement Book and Page are shown on RW plans.
- Easement areas are extended to property or section lines (Forest Service requirement)
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MacDonald Pass
Helena, MT
Acquisition of USFS Lands

Rogers Pass Lincoln, MT
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Bozeman Pass
Bozeman, MT
Application Process

- The Acquisition Agent prepares an application for transmittal to the FHWA and USFS. Applications must contain or be accompanied by the following information:
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- purpose for which the land is to be used;
- interest in the land required;
- Federal-aid project number;
- name of the agency exercising jurisdiction over the lands
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- commitment to use the land within 20 years;
- map (RW Plans) showing lands to be acquired; public lands affected;
- acceptance of the right-of-way subject to the terms and conditions of the granting agency;
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• access control clause for Interstate highway projects; and/or
• commitment to comply with the *National Environmental Policy Act of 1969*, the *Historic Preservation Act*, the provisions for the Preservation of Park Lands, the *Archaeological Resource Protection Act of 1979* and the *Civil Rights Act of 1964*. 
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• If applicable:
• MDT makes a request for timber cruise appraisal summary from the Forest Service.
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- MDT Survey Stakes proposed RW.
- Forest Service determines Marketable value
- Approximate Minimum Semi truck load for lumber purposes.
- Stack and Deck for public consumption (firewood)
- Biggest issue: Improper payments
  - Purchase timber with State Funds
  - Reimbursement later from Feds
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What you may bump into on a road thru the Forest Service Lands....
Lincoln, MT 700 pound Grizz hit by pick-up Hwy 200 in 2007

Forest Service Lincoln Ranger District Office
Acquisition of USFS Lands
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- The application, cover letter right of way plans, plan and profile plans, construction plans, environmental documents and exhibits are sent to:
  - FHWA
  - Regional Forester (Missoula)
  - Specific Forest Supervisor
  - Specific Forest District Ranger
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- USFS has 4 months to review application package and presents questions (if any) to MDT.
- After approval, the Forest Service issues a Letter of Consent, the language is then reviewed and (most likely) approved by:
  - District Administrator
  - District Engineer Supervisor
  - District Construction Supervisor
  - District Right of Way Supervisor
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• Upon MDT district approval the MDT Acquisition Manager signs and sends to FHWA
  ▪ Letter of transmittal that stipulations are acceptable
  ▪ The signed Highway Easement and exhibit.

• Upon review by FHWA Legal and signing by the FHWA Administrator, the documents are recorded in county courthouse and copies sent to the Forest Service
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- Other situations……
- Emergency repairs requiring a temporary construction permit (temp easement).
  - Rock Slides
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- Road Slides
- Flooding
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- **Special Use Permits**
  - same application process except approval comes in days and we do not send application to FHWA.
  - After highway project is completed another application may be required for permanent highway easement.
  - Both parties desire acquiring enough right of way to avoid requiring more in future.
Beartooth Highway US 212

- “the most beautiful road in America.”
  - Charles Kuralt, CBS News travel correspondent
Beartooth Highway US 212

- Passes thru Custer and Shoshone National Forest and Absaroka-Beartooth Wilderness.
- Connects Red Lodge, MT to Cooke City, MT and Yellowstone National Park thru Wyoming
- 67 miles climbing to 10,947 feet above see level. Highest elevation highway in Northern Rockies
- Open Mid-May to Mid October
Beartooth Highway US 212

- Constructed 1932-1936
Beartooth Highway US 212

- 5 years
- $2,500,000
Beartooth Highway US 212
Beartooth Highway US 212

- 2005 Rock slides following winter/spring runoff

The road was closed for reconstruction, and a $20.4 million construction contract issued
An estimated 100,000 cubic yards of rock were removed from a 0.5-mile-long section of the highway near the top of the switchbacks, and construction crews drilled down to solid bedrock to create new supports for the road.
Beartooth Highway US 212

• Annual Snow removal
Beartooth Highway US 212

Committee on Right of Way, Utilities, and Outdoor Advertising Control Annual Meeting, 2019
Beartooth Highway US 212
Um.... True story.

According to the Park County Sheriff's Office, two visitors got stuck in deep snow on the Beartooth Highway. Visitors from Los Angeles, California had to be rescued by Park County Search and Rescue after they ignored the posted "Road Closed" signs and became stuck in deep snow. The visitors were following directions from their GPS device when they became stuck in about a foot of snow on the highway. They passed at least two "Road Closed" signs prior to becoming stuck but said that their navigation device indicated the road to be open, so they continued around the signs.
Thank you.
Special Acquisitions: Federal & State Owned Property

- Coordinated centrally in HQ
- Typically extends project schedule
- Varies widely by Agency
- Assorted property rights
Special Acquisitions:

Keys to success

- Find the appropriate contact
- Identify agency procedures
- Meet agency expectations
- Follow up and follow through
Tennessee is 26\textsuperscript{th} in percentage of Federally owned lands (27\textsuperscript{th} in acreage)

- Approximately 1.25 million out of 26.73 million acres (4.7%)
- No tribal lands
- 85\% Forest Service and National Parks
- Does not include Tennessee Valley Authority
Special Acquisitions:
Federally Owned Property

- National Park Service
- Forest Service
- USDA
- Department of Energy
- US Army Corps of Engineers
- GSA
Special Acquisitions:
Federally Owned Property

- Initially similar private acquisition: Plans, legal description, environmental clearance, etc.
- Permanent easement or license agreement
- No compensation
- Mitigate impacts to certain properties
- Typically a two year process
Special Acquisitions: 
Tennessee Valley Authority

- Founded in 1933
- Owned by Federal Government
- Operated as private corporation
- No taxpayer funding
- Provide navigation, flood control, electricity generation, fertilizer manufacturing, and economic development
- Includes aspects of utilities
- Headquartered in Knoxville, TN
Core Mission:

“... improve the quality of life in the Valley through the integrated management of the region’s resources”

- Energy
- Environment
- Economic Development
**Special Acquisitions:**
**Tennessee Valley Authority**

- 80,000 sq. mi. service area
- Provide electricity to 9 million +
- Sell power to 154 utilities
- 293,000 acres of reservoir land
- 11,000 miles of shoreline
- Estimated $12B economic impact from recreational use.
Special Acquisitions: Tennessee Valley Authority

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Special Acquisitions:
Tennessee Valley Authority

- Transmission lines
- Recreational lands
- Power generation
- Railroad spurs
- Flood Easements
- Waterways/Reservoirs
Special Acquisitions: Tennessee Valley Authority

- Do not pay Fair Market Value
- Appraise property
- Pay Administrative Fee
- No Net Loss flood easements
- Obtain permanent easement
- Typically a 2 year process
Special Acquisitions:
State Owned Property

- Typically do not pay for ROW from other State agencies
- Transfer of jurisdiction
  - Interdepartmental transfer
  - Not recorded
- Handled by Department of General Services
- Exceptions:
  - University of Tennessee
  - Board of Regents
  - Independently governed universities
Special Acquisitions:
State Route 76 (US 79) Widening

- Montgomery & Stewart Counties
- 3 Projects covering approximately 17 miles
- 5 miles new alignment
- Fort Campbell (United States Army)
  - Over 100,000 acres in Kentucky and Tennessee
  - Home to 101st Airborne Division & 160th Special Operations Aviation Regiment
  - SR76 runs along southern border of the fort
Special Acquisitions: Fort Campbell
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- 218 acres in fee simple
- Wanted TDOT to acquire replacement property
- Needed ROW was (technically) donated
- Transaction amount was determined by Corps of Engineers in house appraisal (replacement property)
- Required special (federal) legislation to allow transfer.
- $4.5 million (slightly more than $20,000/acre)
- Took 4 years to acquire