

**U.S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE**

**ROAD USE PERMIT**

**AUTHORITY:**

**Section 4 and Section 6 of the National Forest Roads and Trails Act  
16 U.S.C. 535 and 537**

El Capitan, LTD is hereby granted use of the following roads or road segments and related transportation facilities (hereinafter "roads") on the Smokey Bear Ranger District of the Lincoln National Forest, for commercial hauling, subject to the terms and conditions of this permit:

NFSR 489 A

**APPENDICES**

A – Operating Plan

**TERMS AND CONDITIONS**

**I. GENERAL TERMS**

**A. AUTHORITY.** This permit is issued pursuant to the National Forest Roads and Trails Act, 16 U.S.C. 535 and 537, and 36 CFR Part 212, Subpart A, as amended, and is subject to their provisions.

**B. RESPONSIBLE OFFICIAL.** The responsible official is the district ranger or a subordinate officer with delegated authority.

**C. TERM.** This permit shall expire at midnight on 09/30/2014, 1 year from the date of issuance. Expiration of this permit shall not require notice, a decision document, or any environmental analysis or other documentation.

**D. RENEWAL.** This permit is not renewable. Prior to expiration of this permit, the holder may apply for a new permit that would renew the use authorized by this permit. Renewal of the use shall be at the sole discretion of the responsible official.

**E. AMENDMENT.** This permit may be amended in whole or in part by the Forest Service when, at the discretion of the responsible official, this action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable land management plan, or projects and activities implementing a land management plan pursuant to 36 CFR part 215.

**F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS.** In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements, including state traffic laws, that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

**G. NON-EXCLUSIVE USE.** The use authorized by this permit is not exclusive. The Forest Service reserves the right to use the roads authorized by this permit and to allow others to use them at any time. The holder shall use the roads authorized by this permit in a manner that will not unreasonably or unnecessarily interfere with their use by others, including the Forest Service. Except for any restrictions that the holder and the Forest Service agree are necessary to protect public safety and road investments, the roads authorized by this permit shall remain open to the public for all lawful purposes.



**H. ASSIGNABILITY.** This permit is not assignable or transferable.

## **II. OPERATIONS**

**A. OPERATING PLAN.** The holder shall prepare an operating plan. The operating plan shall be prepared in consultation with the responsible official or the responsible official's designated representative and shall cover all operations authorized by this permit. At a minimum, the operating plan shall specify the date the use authorized by this permit will commence, the duration and extent of the use, the products that will be hauled, the names of the holder's employees, contractors, and subcontractors who will use the roads authorized by this permit on behalf of the holder, and any other information regarding the authorized use deemed necessary by the responsible official. The operating plan shall be submitted by the holder and approved by the responsible official or the responsible official's designated representative prior to commencement of commercial hauling under this permit and shall be attached to this permit as Appendix A. If there is any material change in the information contained in the operating plan, the holder shall notify the responsible official promptly in writing of the change.

**B. HOLDER'S REPRESENTATIVE.** The holder shall designate a representative for purposes of administration of this permit and shall notify the responsible official in writing who the holder's representative will be.

**C. PUBLIC SAFETY.** When the holder is engaged in commercial hauling adjacent to or on National Forest System roads or National Forest System trails open to public travel, the holder shall provide users with adequate warning of hazardous conditions associated with the holder's operations.

## **D. TRAFFIC RULES AND USE RESTRICTIONS**

1. The holder and its agents, employees, and contractors shall comply with all traffic rules and use restrictions imposed by the Forest Service, including:

- a. Road closures or use restrictions prompted by weather conditions, a fire hazard, or road construction or maintenance.
- b. Traffic rules for safe and effective use of roads.
- c. Regulation of the number of vehicles using a road to prevent traffic congestion.

2. Unless specified in this permit or approved in writing by the responsible official, use of motor vehicles by the holder or its agents, employees, or contractors must be in accordance with the applicable motor vehicle use map (36 CFR 261.13).

**E. REQUIREMENT TO CARRY A COPY OF THE PERMIT.** Drivers of all vehicles operating under this permit shall have a copy of the first sheet of this permit in their vehicle. The copy will be presented, on request, to any Forest Service officer.

## **III. RIGHTS AND LIABILITIES**

**A. LEGAL EFFECT OF THE PERMIT.** This permit, which is revocable and terminable, is a federal license. This permit does not constitute a contract or lease for purposes of the Contract Disputes Act, 41 U.S.C. 601. This permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

**B. VALID OUTSTANDING RIGHTS.** This permit is subject to all valid outstanding rights.

**C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS.** The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

**D. RISK OF LOSS.** The holder assumes all risk of loss associated with use of the roads authorized by this permit, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and acts of God.



**E. DAMAGE TO UNITED STATES PROPERTY.** The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs, damage to government improvements covered by this permit, and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. For purposes of this clause, "hazardous material" shall mean any hazardous substance, pollutant, contaminant, hazardous waste, oil, and/or petroleum product, as those terms are defined under any federal, state, or local law or regulation.

1. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, while conducting commercial hauling under this permit. If the environment or any government property covered by this permit becomes damaged during the holder's use under this permit, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the responsible official and at no expense to the United States.

2. The holder shall be liable for all injury, loss, or damage, including fire suppression, or other costs in connection with rehabilitation or restoration of natural resources associated with the use authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.D.

3. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause VI.E.1.

**F. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION.** The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any activity or condition arising out of or relating to use of the roads authorized by this permit that causes or threatens to cause a hazard to public health or the safety of the holder's employees or agents or harm to the environment (including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources). The holder shall immediately notify the responsible official of all traffic accidents and any other serious accidents that occur in connection with the authorized use. The responsibility to protect the health and safety of all persons affected by use of the roads authorized by this permit is solely that of the holder. The Forest Service has no duty under the terms of this permit to inspect the roads authorized by this permit or authorized activities of the holder for hazardous conditions or compliance with health and safety standards.

**G. COMPLIANCE WITH ENVIRONMENTAL LAWS.** The holder shall in connection with use of the roads authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, the Oil Pollution Act, as amended, 33 U.S.C. 2701 *et seq.*, the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.*, the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 *et seq.*, the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.*, and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*

**H. INDEMNIFICATION OF THE UNITED STATES.** The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder or the holder's employees, contractors, or subcontractors in connection with use of the roads authorized by this permit. This indemnification provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, or contractors in connection with use of the roads authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause V.G of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States;



(3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment. The responsible official may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

## **I. INSURANCE**

1. The holder or the holder's employees, contractors, or subcontractors shall have in force automobile insurance covering losses associated with the use authorized by this permit in at least the amount of \$20,000 for injury or death to one person, \$50,000 for injury or death to two or more persons, and \$10,000 for property damage. Minimum amounts of coverage and other insurance requirements are subject to change at the sole discretion of the responsible official on the anniversary date of this permit.
2. Any insurance policies obtained by the holder pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under clause VI.I. The policies also shall specify that the insurance company shall give 30 days prior written notice to the responsible official of cancellation of or any modification to the policies.
3. The holder shall furnish proof of insurance, such as a certificate of insurance, to the responsible official prior to issuance of this permit and each year thereafter that this permit is in effect. The Forest Service reserves the right to review and approve the insurance policy prior to issuance. The holder shall send an authenticated copy of any insurance policy obtained pursuant to clause VI.I to the responsible official immediately upon issuance of the policy. The certificate of insurance, the authenticated copy of the insurance policy, and written notice of cancellation or modification of insurance should be sent to Smokey Bear Ranger Station, 901 Mechem Drive, Ruidoso, NM 88345

## **IV. REVOCATION, SUSPENSION, AND TERMINATION**

**A. REVOCATION AND SUSPENSION.** The responsible official may revoke or suspend this permit in whole or in part for:

1. Noncompliance with federal, state, or local law.
2. Noncompliance with the terms of this permit.
3. Abandonment or other failure of the holder to exercise the privileges granted.

Prior to revocation or suspension, other than immediate suspension under clause VII.B, the responsible official shall give the holder written notice of the grounds for revocation or suspension and a reasonable time, typically not to exceed 90 days, to cure any noncompliance. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

**B. IMMEDIATE SUSPENSION.** The responsible official may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing.

**C. TERMINATION.** This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the responsible official, such as expiration of the permit by its terms on a specified date or with the consent of the holder. Termination of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

## **V. MISCELLANEOUS PROVISIONS**

**A. MEMBERS OF CONGRESS.** No member of or delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.




**B. CURRENT ADDRESSES.** The holder and the responsible official shall keep each other informed of current mailing addresses, including those necessary for payment of the holder's commensurate or investment share.

**C. SUPERIOR CLAUSES.** If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.


**THIS PERMIT IS ACCEPTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.**

**BEFORE ANY PERMIT IS ISSUED TO AN ENTITY, DOCUMENTATION MUST BE PROVIDED TO THE RESPONSIBLE OFFICIAL OF THE AUTHORITY OF THE SIGNATORY FOR THE ENTITY TO BIND IT TO THE TERMS AND CONDITIONS OF THE PERMIT.**

ACCEPTED:

 23 Sept 13  
\_\_\_\_\_  
RANDY BOULDIN, EL CAPITAN LTD SIGNATURE DATE

APPROVED:

 9/24/13  
\_\_\_\_\_  
DAVID M. WARNACK, DISTRICT RANGER SIGNATURE DATE

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0016. The time required to complete this information collection is estimated to average [fill in burden hour estimate] hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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



**APPENDIX A  
OPERATION AND MAINTENANCE PLAN**

**EL CAPITAN LTD. FR 489A  
ROAD USE PERMIT**

This plan is developed to establish the specifications and procedures to prevent and control natural resource damage resulting from the use and maintenance of the road to a patented mining claim owned by El Capitan Ltd. located in Secs. 14 & 15, T. 8 S., R. 14 E. This is developed in compliance with the Road Use Permit FS 7700-41.

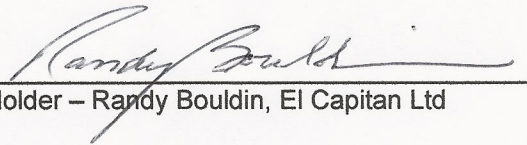
This Stipulation, made this 12th day of July, 2012, by and between Randy Bouldin of El Capitan Ltd, hereinafter referred to as the Holder, and USDA Forest Service—Lincoln National Forest acting by and through its authorized representative, hereinafter referred to as the Forest Service.

Whereas, the Holder has been issued a Road Use Permit dated July 12, 2012 for the use and occupancy of National Forest land for the use and maintenance of a road, and such authorization requires that all maintenance/repair conform with approved plans, specifications, and stipulations. The holder will contract with local resources to haul in heavy equipment, eg. back hoe, to collect mineral samples from a patented mining claim within the boundary of the Lincoln National Forest. Samples will be loaded and hauled across National Forest System Lands on Forest Service Road 489A.


Now, therefore, the Holder agrees to the following terms and conditions, and the Forest Service hereby authorizes the use and maintenance to proceed in accordance with these terms and conditions:

1. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or any revision thereof for this area must have prior approval by the Forest Service.
2. The Holder shall comply with all Federal and State laws and the regulations of the Secretary of Agriculture, having due regard for the health and safety of employees; and safeguard with barriers and covers when the road would unduly imperil the life, safety or property of other persons.
3. The Holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the Forest Supervisor.
4. The Holder shall take reasonable precautions to protect, in place, all public land survey monuments, private property corners, and Forest boundary markers. The holder shall notify the Forest Service concerning any monument/marker that cannot stay in place so it can be moved by Forest Service prior to work commencing.
5. The Holder shall maintain a muffler or spark arrester satisfactory to the Forest Service on the exhaust systems of all trucks and tractors or other internal combustion engines, including chainsaws, used in connection with the use and maintenance of this road.
6. The Holder shall cut only timber as necessary in clearing for previously approved road construction, reconstruction, and maintenance. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by the Forest Service and decked along the road for disposal by the Forest Service.
7. All woody slash, debris, and excess soil and rock, resulting from construction and maintenance work under this permit shall be disposed of in a manner satisfactory to the Forest Supervisor or designated representative.
8. The Holder shall be responsible for the prevention and control of soil erosion and gullyng in the permit area and shall take such preventative measures as are necessary to repair and revegetate damaged areas and to prevent future damage.

9. The Holder shall repair fully all damage to National Forest roads and trails caused by the Holder in exercise of the privileges granted.
10. Failure to comply may result in permit revocation and removal of improvements.
11. The Holder understands and agrees with this operation and maintenance plan.

  
Holder – Randy Bouldin, El Capitan Ltd

23 Sept 13  
Date

  
Authorized Officer – District Ranger

9/23/13  
Date