



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
Washington D.C. 20250



DATE: April 30, 1999

REPLY TO
ATTN OF: 08801-5-SF

SUBJECT: Thunderbird Lodge Land Exchange

TO: Mike Dombeck
Chief
Forest Service

ATTN: Linda Washington
Audit Liaison

This evaluation report is a part of our ongoing region-wide evaluation of the Pacific Southwest Regional Office Land Adjustment Program (Audit No. 08002-1-SF). This report presents our concerns about the processing of the Thunderbird Lodge land exchange. The Forest Service needs to address these concerns prior to closing the final phase of the land exchange in order to protect the public's best interest and to avoid future liabilities.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective action taken or planned and the time frames for implementation. Please note that the regulation requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from date of report issuance.

We appreciate the cooperation and assistance provided by your staff during the evaluation.

JAMES R. EBBITT
Assistant Inspector General
for Audit

**FOREST SERVICE
PACIFIC SOUTHWEST REGION
THUNDERBIRD LODGE LAND EXCHANGE
LAKE TAHOE BASIN MANAGEMENT UNIT
SOUTH LAKE TAHOE, CA
EVALUATION REPORT NO. 08801-5-SF**

APRIL 1999

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL - AUDIT
WESTERN REGION
600 HARRISON STREET, SUITE 225
SAN FRANCISCO, CA 94107**

EXECUTIVE SUMMARY

FOREST SERVICE PACIFIC SOUTHWEST REGION THUNDERBIRD LODGE LAND EXCHANGE LAKE TAHOE BASIN MANAGEMENT UNIT SOUTH LAKE TAHOE, CA EVALUATION REPORT NO. 08801-5-SF

PURPOSE

This evaluation report presents the results of the U.S. Department of Agriculture, Office of Inspector General's (OIG) review of the Thunderbird Lodge (Thunderbird) land exchange transaction at Lake Tahoe.

Our objectives were to determine if the Thunderbird land exchange meets Forest Service (FS) land adjustment policies and procedures; if the proposed uses of the Thunderbird site are feasible; and if the exchange serves the public's best interest. Although the land exchange has not yet been completed, this report is being issued to alert the FS to conditions that need to be resolved prior to accepting title to the remainder of the estate.

OIG has had concerns about the Thunderbird exchange since we first became aware that it was being processed. At that time, we were concerned that FS acquisition of a developed property was an inappropriate use of public resources, and that the FS had not planned for the maintenance of the structures, or for the management of their use. These concerns were reported to the Chief of the FS in a Management Alert on June 30, 1997.

RESULTS IN BRIEF

The FS will acquire a significant liability and administrative burden if conditions relating to the land exchange are not resolved. These conditions concern the ownership of the existing structures on the

Thunderbird property and the feasibility of further development of the land. When the land exchange was first proposed, FS lands staff made it clear the FS could not be responsible for maintaining the historic structures. The FS proceeded with the land exchange only after the proponent agreed to retain ownership of the structures through a deed reservation¹. After the exchange was completed, the proponent intended to sell its reserved rights to the University of Nevada-Reno (UNR), which would use the buildings for lake-related research. This arrangement was acceptable to the FS, which believed UNR's lake-related research would serve a public benefit, would meet the objectives of the Lake Tahoe Basin Management Unit, and would relieve the FS of any maintenance responsibility. However, UNR later decided

¹A reservation is a clause in a deed that reserves for the grantor (in this case, the proponent) some right or interest in the estate being conveyed. The reservation occurs when the right or interest would normally pass to the grantee.

against buying the historic structures and instead, planned to construct a new research facility at a different location on the property. The exchange proponent then arranged to sell the historic structures to a nonprofit organization to use as a conference center and for public tours.

Our evaluation found that conditions changed during the processing of the land exchange, but the language of the draft reservation under which all parties are proceeding has not been revised to take these new conditions into account. We noted the following conditions which should be resolved by FS lands staff before proceeding with the land exchange:

- Ownership of the Thunderbird structures is no longer certain. The nonprofit organization has declined to purchase the Thunderbird Lodge, and the exchange proponent has no new buyer. If the Lodge is not used in accordance with the restrictive terms of the draft reservation, any structures not removed from the property will become the FS' responsibility.
- The draft reservation language severing the historical structures from the FS lands does not address the cost of maintaining them. The reservation requires the proponent to remove all structures and restore the FS land to its natural condition when the reservation terminates. However, because the Lodge has been designated a historical structure, it is doubtful it can be removed. No provision has been made to require the exchange proponent to maintain the buildings if they cannot be removed.
- Now that UNR is no longer interested in using the historical structures for research, the original justification for keeping the structures in place no longer applies. Although the FS does not normally allow structures to remain on land it acquires through exchange, it agreed to acquire the Thunderbird property with the structures intact because UNR planned to use them as research facilities. Once UNR abandoned interest in the historical structures and decided to build a new research facility at a different site on the property, the FS had little justification for acquiring the land with the structures in place.
- The feasibility of constructing a separate UNR research facility, and using the existing structures as a conference center and for public tours has not been adequately addressed. The land's existing water rights and sewage capacity will not support the proposed uses or any sizable number of overnight visitors. The chances of upgrading the water rights are uncertain, and the proponent's solution to the limited sewage capacity is unrealistic.
- Approval by the Tahoe Regional Planning Agency (TRPA) relating to the use of the existing structures and proposed new construction has not been obtained. If TRPA disapproves any of the proposed uses of the land, the expectations under which the land exchange is proceeding are without basis.

If the above issues are not resolved prior to closing Phase 2, the FS will risk having to maintain the historic structures at an annual cost of \$300,000. With the functional life of the structures estimated to be 40 years or more, the FS could acquire a maintenance liability of at least \$12 million. At

a minimum, the FS will incur the administrative burden of having to ensure that the proposed uses of the Thunderbird site, presented by the exchange proponent, are indeed feasible.

The exchange proponent is anxious to close Phase 2 of the Thunderbird land exchange. According to the proponent's plans, it is behind schedule in developing the Federal Las Vegas lands it is acquiring from the Bureau of Land Management (BLM). Despite the proponent's eagerness to complete the exchange, FS lands staff must ensure that the above conditions have been resolved and the public's interest protected, before finalizing the exchange.

KEY RECOMMENDATIONS

We recommend that the FS not proceed with Phase 2 of the Thunderbird land exchange unless the following actions are completed:

(1) the proponent provides signed agreements to the FS identifying the owner of the historic structures,

(2) the FS modifies the reservation language to make the owner legally responsible for the maintenance of the structures even if the reservation is terminated and the structures cannot be removed from the land, and

(3) the proponent establishes an endowment fund sufficient to meet the maintenance costs over the term of the reservation.

If the proponent is unwilling to agree to the above recommendations, then the FS should not proceed with Phase 2 until the proponent pays for the full cost of historic mitigation, removes the structures, and restores the Thunderbird site to its natural condition.

In addition, the FS should ensure that the proposed UNR research project and the Thunderbird conference center that will be developed at the site are feasible by ensuring that the exchange proponent completes transfer of the optioned water rights to the Thunderbird property and guarantees the feasibility of the proposed construction, including obtaining the requisite approvals from TRPA and reviewing the sufficiency of water rights and sewer capacity.

Finally, the FS should confer with the OGC to ensure that all legal matters are completed and that the public's interest is protected prior to closing Phase 2.

We discussed these issues and recommendations with Washington Office lands staff, regional office lands staff, and an attorney from OGC. An official response is not required from the FS until after the issuance of the final report.

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ACRONYMS

BLM	Bureau of Land Management
EA	environmental assessment
FS	Forest Service
OGC	Office of the General Counsel
OIG	Office of Inspector General
TRPA	Tahoe Regional Planning Agency
UNR	University of Nevada - Reno

INTRODUCTION

BACKGROUND

Land exchanges between the National Forest System and other ownerships are needed to protect key resources, eliminate conflicting uses, and reduce fragmented ownership. Much of the non-Federal land acquired through land exchanges lies within classified wilderness areas, national recreation areas, wild and scenic river corridors, national trails, and other congressionally designated areas. In fiscal year 1997, the Forest Service (FS) completed equal-value exchanges involving 133,046 acres of National Forest System land for 244,178 acres of non-Federal land, a 27-percent increase over fiscal year 1996. The acquired lands included thousands of acres of critical wildlife habitat, wetland, and riparian areas.

The Thunderbird Lodge (Thunderbird) property is the largest privately held parcel on Lake Tahoe and comprises about 140 acres on the northeast shore of the lake. A real estate development firm purchased the property in early 1998 and, as a land exchange proponent, offered the property to the FS in exchange for Federal lands owned by the Bureau of Land Management (BLM) near Las Vegas. Thunderbird's appraised value of about \$50 million makes it one of the most expensive FS land exchange transactions to date.

The property includes a mile of lake frontage with numerous small sandy beaches. The property contains the lower portion of the Marlette Creek and is a habitat for the bald eagle, osprey, goshawk, and other sensitive species. The developed portion of the property contains a 16,000-square-foot stone mansion known as the Thunderbird Lodge. The mansion, built in the 1930's, is reminiscent of a medieval French chateau and is constructed of granite blocks, leaded windows, and gables decorated with hand-wrought iron work. There are also four additional stone guesthouses, a gatekeeper's house, and a large boathouse with direct lake access. The lodge and other buildings have been added to the State of Nevada's historical listing and are eligible for the National Register.

The Thunderbird parcel is surrounded by National Forest System lands and is considered to be a value to the public. The regional forester considered the watershed and recreation opportunities to be significant. However, while management of the Thunderbird land is not an issue, the long-term management of the historic structures would be a significant problem for the FS. Maintenance of the lodge and other structures is conservatively estimated to be \$300,000 per year, which would exceed the entire annual maintenance budget of the Lake Tahoe Basin Management Unit. The regional forester considered acquisition of both the Thunderbird and Zephyr Cove estates in Lake Tahoe to be a "once in a lifetime opportunity." However, he only supported public acquisition of the Thunderbird estate if it could be done without any cost to the FS for operation and maintenance of the structures.



THUNDERBIRD LODGE

The Office of Inspector General (OIG) developed evidence to show that FS acquisition of a developed property was an inappropriate use of public resources, and that the FS had not planned for the maintenance of the structures or for the management of their use. OIG issued a Management Alert to the Chief of the FS on June 30, 1997, recommending that the FS (1) evaluate the Thunderbird exchange to determine if it is in the best interest of the agency and the public; (2) acquire only the undeveloped land if the exchange is completed; and (3) document FS responsibilities associated with administration and maintenance of the structures.

To alleviate FS concerns regarding the ownership and maintenance of the historic Thunderbird structures, the President of the University of Nevada - Reno (UNR) wrote to the regional forester in the summer of 1997, stating UNR's commitment to purchase the structures from the proponent. UNR intended to operate the structures as a research station for water quality-related research at Lake Tahoe. FS lands staff agreed to proceed with the land exchange under the expectation that UNR would own and maintain the historic structures.

In order to legally sever the Thunderbird structures from the underlying land, the FS Washington Office lands staff, in consultation with the Office of the General Counsel (OGC), required that a reservation be added to the deed. The reservation would allow the proponent to retain ownership of the structures while transferring the land to the FS. The deed would also reserve the proponent's right to use 6.5 acres of FS land surrounding the structures. The initial term of the reservation would be 40 years with subsequent 20-year

renewals until the condition of the structures made them no longer useable.

With FS approval, ownership of the improvements and the reserved interest in the FS lands could be transferred to another party at a later date. Upon completion of the exchange, the proponent intended to transfer ownership of the structures and the proponent's reserved interest to UNR. UNR would operate the facilities for research and other related activities. The FS would prohibit any other activities.

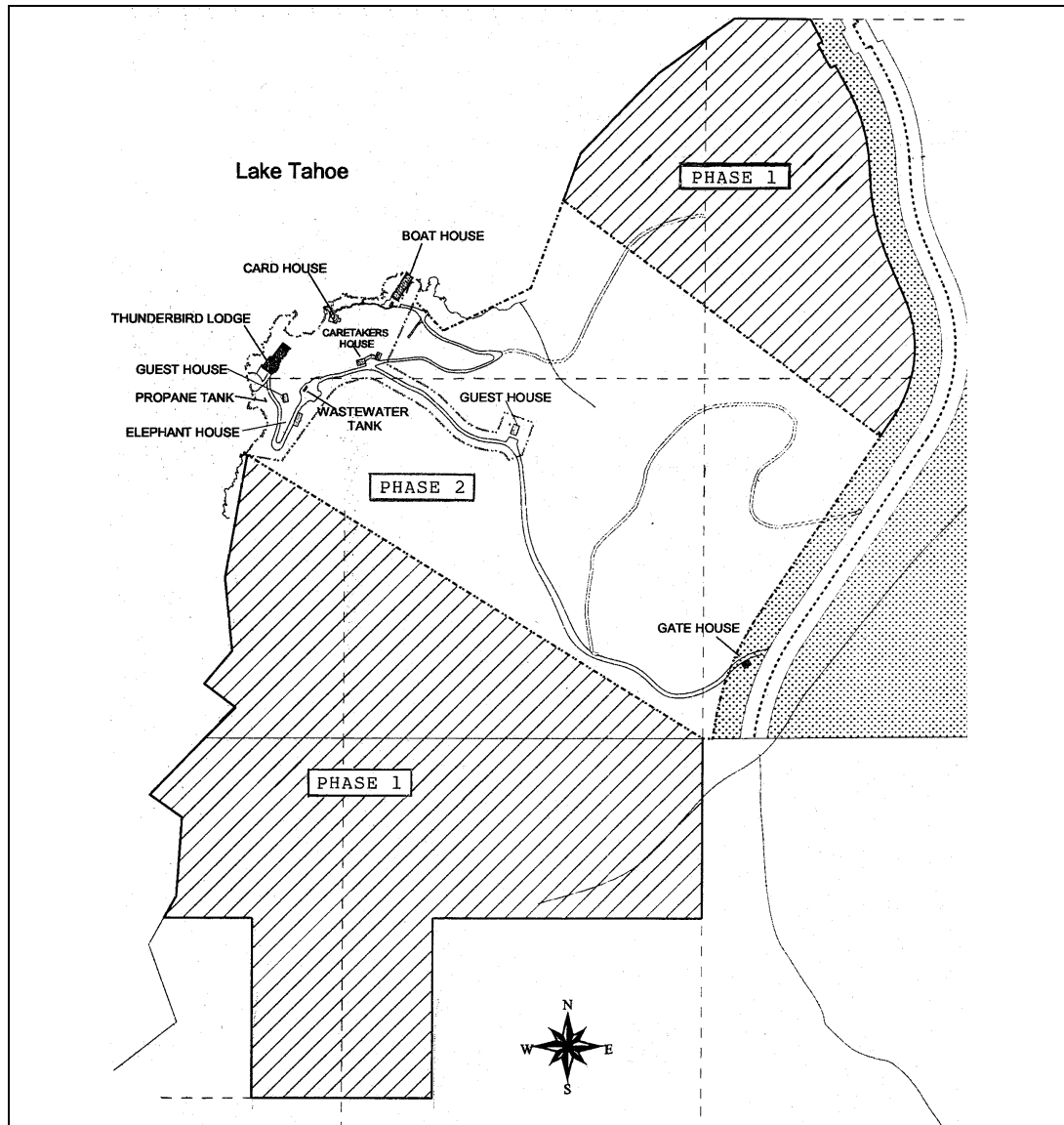
The total appraised value of the Thunderbird property, with structures, was \$50.4 million. BLM's chief state appraiser determined that the Thunderbird land, encumbered with a reservation, was worth \$40.5 million. The difference of \$9.9 million represented the appraised value of the structures (\$3.5 million) and the loss in value due to the reserved 6.5 acres (\$6.4 million).

BLM lands staff decided to complete the Thunderbird land exchange in two phases. The BLM chief appraiser prorated the property's total approved value of \$40.5 million between Phase 1 and Phase 2. The first phase of the land exchange involved the transfer of 86 unimproved acres, valued at about \$16.1 million. Phase 2 will transfer the remaining 54 acres, which includes the developed area where the lodge and other structures are located. It has an assigned value of \$24.4 million. The figure on the next page illustrates the areas to be acquired in the two phases of the exchange.

UNR intended to purchase the Thunderbird structures and the reserved interest from the exchange proponent for about \$10 million; obtain Tahoe Regional Planning Agency (TRPA)² approval for its proposed research project; and operate the facilities as a research center. However, during the processing of Phase 1, TRPA rejected UNR's plans to build its research station over the Thunderbird boathouse. After TRPA's rejection, UNR decided that it had no further use for the Thunderbird Lodge and other structures and did not want responsibility for maintaining them. However, UNR still wanted a research station at Lake Tahoe and proposed building a new facility at a different site on the Thunderbird property. Even though this proposal would allow UNR to construct a new building on environmentally sensitive land, FS lands staff agreed with the proposal because they considered lake-related research to be a public benefit and in line with one of the management objectives of the FS' Lake Tahoe Basin Management Unit.

After UNR declined to purchase the historic structures, the exchange proponent found a nonprofit organization willing to purchase the Thunderbird structures and the proponent's reserved interest in the FS land. The proponent told FS lands staff that the organization planned to operate the Thunderbird Lodge as a conference center and conduct public tours of the historic facilities. The organization would use the revenue generated from these operations to maintain the structures. FS lands staff agreed to proceed with Phase 2 of the exchange

²TRPA regulates land use, the rate of growth, the extent to which land is covered with homes and other construction, excavation, and impacts on scenic views. TRPA's regional plan and Code of Ordinances help achieve and maintain the environmental thresholds against which all projects and activities, including those on national forest land, are measured.



Phase 1 (striped area) of the exchange included 86.55 acres and was completed on July 17, 1998. Phase 2 (containing improvements indicated in the figure above) is in process and includes the remaining 54.34 acres.

and acquire the Thunderbird land with the historic structures intact even though UNR no longer intended to use them for lake-related research. However, the proponent recently informed the FS that the nonprofit organization is no longer interested in purchasing the Thunderbird structures.

OBJECTIVES

public's best interest.

Our objectives were to determine if the Thunderbird land exchange met FS land adjustment policy and procedures; if the proposed uses of the Thunderbird site were feasible; and if the exchange served the

SCOPE

We reviewed all documents relating to the processing of the Thunderbird land exchange through the end of February 1999. We conducted fieldwork at the various locations (see Methodology section below) from August 1998 through February 1999. Our review of the Thunderbird exchange is part of our ongoing evaluation of land transactions at the FS Pacific Southwest Regional Office.

Phase 2 of the Thunderbird land exchange is still in process. The BLM chief appraiser is currently updating the appraised values for both the Federal Las Vegas lands and the Thunderbird lands in Phase 2 and has not completed his work at this time. The environmental assessment (EA) for the proposed use of the Thunderbird site, paid for by the proponent and reviewed by OIG as part of our evaluation, is still in draft form and remains to be modified and finalized at a later date.

Our evaluation was performed in accordance with the Quality Standards for Inspections issued in March 1993 by the President's Council on Integrity and Efficiency.

METHODOLOGY

To accomplish our objectives, we performed the following steps and procedures:

- At the FS Washington Office, we interviewed staff in the lands section concerning the Thunderbird land exchange.
- At the FS regional office in San Francisco, California, we interviewed lands staff to discuss the actions being taken to address the ownership and maintenance of the Thunderbird Lodge and other structures. In addition, we reviewed the exchange case files, discussed the proposed uses and new construction with lands staff, and obtained copies of the Thunderbird appraisals and other relevant documents.
- At the Lake Tahoe Basin Management Unit, we met with forest staff to discuss the ownership and maintenance of the Thunderbird structures. We also reviewed the exchange case files and discussed the exchange with the lands staff.
- We met with regional staff attorneys at OGC in San Francisco, California, to discuss legal issues identified during the evaluation.
- We interviewed management and lands staff at BLM in the Nevada State office in Reno, Nevada, and the Las Vegas district office concerning the staff's involvement in the Thunderbird land exchange.

- We met with staff of TRPA at South Lake Tahoe, Nevada, to discuss the proposed use of the Thunderbird site and any concerns they had about the use of the existing structures and proposed new construction.
- We discussed the proposed water needs and the status of water rights at the Thunderbird site with staff of the State of Nevada Water Engineer's Office.
- We interviewed representatives from the exchange proponent to discuss the status of the land exchange and planned uses of the Thunderbird site.

FINDINGS AND RECOMMENDATIONS

I. THE FOREST SERVICE WILL ACQUIRE A SIGNIFICANT LIABILITY AND ADMINISTRATIVE BURDEN IF ISSUES IN THE THUNDERBIRD LAND EXCHANGE ARE NOT RESOLVED PRIOR TO CLOSURE OF PHASE 2

The FS will be exposed to a significant maintenance liability and administrative burden if conditions in the pending land exchange are not resolved prior to closing Phase 2. Our evaluation found that ownership of the Thunderbird structures has not been addressed; the draft reservation severing the structures from the FS lands has no provision for maintaining the buildings; the original justification for keeping the structures in place no longer applies; the feasibility of the proposed conference center and the construction of a new UNR research facility on the site has not been adequately assessed; and TRPA approvals relating to the use of the existing structures and proposed new construction have not been obtained.

If the above issues are not resolved prior to closing Phase 2, the FS will risk having to maintain the historic structures at an annual cost of \$300,000. With the functional life of the structures estimated to be 40 years or more, the FS could acquire a maintenance liability of at least \$12 million. At a minimum, the FS will incur the administrative burden of having to ensure that the proposed uses of the Thunderbird site, presented by the exchange proponent, are indeed feasible.

The exchange proponent is anxious to close Phase 2 of the Thunderbird land exchange. According to the proponent's plans, it is behind schedule in developing the Federal Las Vegas lands it is acquiring from BLM. Despite the proponent's eagerness to complete the exchange, FS lands staff must ensure that the above conditions have been resolved and the public's interest protected, before finalizing the exchange.

FINDING NO. 1

ISSUES OF OWNERSHIP AND MAINTENANCE RESPONSIBILITY FOR HISTORIC STRUCTURES HAVE NOT BEEN RESOLVED

FS lands staff are proceeding to finalize the Thunderbird land exchange even though ownership of the existing structures has not been resolved. We also found that the deed reservation does not provide for maintenance costs if the structures revert to FS ownership. Finally, FS lands staff have not reevaluated the merits of the land exchange even though the original conditions under which it was accepted no longer apply. If these issues are not resolved before Phase 2 of the land exchange is completed, the FS could be responsible for the ownership of the historic structures by default and could face a maintenance liability of at least \$12 million.

Title 36 CFR 254 requires that all land exchanges be in the public interest. The land exchange should increase public values and the FS' ability to meet land management objectives. Parcels conveyed to the United States of America cannot be encumbered by reservations or outstanding interests that would unduly interfere with their use and management as part of the National Forest System.

When the Thunderbird land exchange was first proposed, FS lands staff made it abundantly clear that the FS could not acquire the property with the historic structures in place because they did not have the funds to maintain them. FS lands staff agreed to proceed with the land exchange only after UNR agreed to purchase the historic structures and use them for lake-related research. Research on Lake Tahoe is one of the primary objectives of the FS' Lake Tahoe Basin Management Unit. We reviewed the Thunderbird land exchange documents, interviewed FS lands staff, OGC counsel, and the exchange proponent. We determined that the final ownership of the Thunderbird structures was in question when FS lands staff processed Phase 1 of the exchange, and remains unresolved as they proceed with Phase 2. We also found that the deed reservation does not provide for maintenance costs if the historic structures revert to FS ownership. Finally, the original justification for acquiring the land with the structure intact no longer exists.

a. **Proponent Has Not Provided the Forest Service With Signed Agreements on the Ownership of Thunderbird's Structures**

The FS currently does not have any signed agreements from the exchange proponent as to who is responsible for the final ownership and maintenance of Thunderbird's historic structures. Such an agreement is needed in order for the FS, as the future landowner of the property, to determine if the future owner of the structures is financially capable, able to comply with the terms of the reservation, and is acceptable to the FS.

UNR declined to purchase the Thunderbird structures in the summer of 1998, shortly before Phase 1 closed. The exchange proponent subsequently found a nonprofit organization willing to purchase and maintain the structures. With Phase 2 scheduled to close in the spring of 1999, we asked the FS for signed agreements between the proponent and the nonprofit organization. FS lands staff stated that the proponent had not submitted any completed documents as of February 1999.

We contacted the exchange proponent on February 10, 1999, to determine if any agreements had been signed. The proponent told us that the nonprofit organization was fully committed to purchasing the Thunderbird structures and the proponent's reserved interest in the 6.5 acres of FS land. However, the proponent stated that no agreement had been signed to date. Twelve days later, on February 22, 1999, we learned that the nonprofit organization had withdrawn its commitment to purchase the structures and the reserved interest.

The land exchange proponent is now trying to find another party willing to purchase the Thunderbird structures and the reserved interest. To date, there are no signed agreements concerning the ownership of the Thunderbird structures.

b. **The Forest Service Draft Reservation Does Not Have a Maintenance Provision**

The draft reservation being used to sever the Thunderbird structures from the land assumes that the buildings can be removed if the owners of the structures do not comply with the terms of the reservation. However, the historical status of the Thunderbird structures might make their removal from the land impossible to accomplish. The draft reservation has no provision for maintaining the structures if the buildings cannot be removed from FS land. The reservation states that any structures not removed from the land will automatically revert to FS ownership. Maintaining the structures for 40 years, the minimum functional life of the structures anticipated in the reservation, would cost the FS at least \$12 million.

Under the current proposal, a private party will own and maintain the existing Thunderbird structures while UNR builds a new research facility at a different location on the property. The draft reservation language developed by OGC states that the historic structures can only be used to support UNR's research facility, as the subject

of public tours, and as a conference center for academic and scientific purposes.

If the owners of the Thunderbird structures do not comply with the terms of the reservation, they are required to remove the structures and restore the site to its natural condition within 3 months of FS notification. Under the current terms of the reservation, if the historic structures cannot be removed from the FS land, the owners would not be legally responsible for maintaining them. Any structures not removed from the site would automatically revert to FS ownership and responsibility.

FS lands staff drafted the reservation under the expectation that the Thunderbird structures could be removed if the owners did not comply with the stated conditions of occupancy and use. FS lands staff stated that, in their opinion, the historic status of the Thunderbird structures would not prevent their removal. In addition, FS lands staff believed that the nonprofit organization fully intended to comply with the terms of the reservation, and that ownership of the structures would not transfer to the FS by default. They thought the reservation's removal provision, and the organization's expressed commitment to the Thunderbird project, sufficiently protected the public's interest.

However, shortly after our meeting with FS lands staff, the nonprofit organization withdrew from the Thunderbird project and no longer intends to purchase the structures and proponent's reserved interest. The proponent is currently seeking another party willing to purchase and maintain the structures. As of this date, no party has come forward. Even if a new purchaser is found, they may not be able to operate and maintain the structures under the specific conditions cited in the reservation. Given that no purchaser has been found, and that the allowable uses are so specific, there is a risk that the terms of the reservation will not be met and the structures will have to be removed.

If the historical structures cannot be removed and the FS acquires ownership by default, the FS would be responsible for maintenance of the structures. The annual cost of maintaining the historic structures is estimated to be almost four times greater than the maintenance budget of the Lake Tahoe Basin Management Unit. The FS regional office assistant director of lands told us that if the FS cannot maintain the Thunderbird structures, it will probably have to board them up. In our opinion, this is not an acceptable solution. The FS should not have the administrative burden of securing structures in which it has no interest. In addition, abandoned structures on FS land would present a public safety hazard.

c. No Current Justification to Acquire Structures

Although it is FS policy to acquire only unimproved property in land exchanges, FS lands staff originally justified acquiring the Thunderbird property with the historic structures in place because UNR was committed to owning the buildings and using them for lake-related

research and public tours. Lake-related research is one of the management objectives for the FS' Lake Tahoe Basin Management Unit. However, that justification no longer exists. UNR now intends to build its research station at a different location on the property and has no use for the existing structures. The proponent is currently seeking another qualified party willing to purchase and to maintain the historic structures.

After UNR decided not to purchase the Thunderbird structures, the FS regional office assistant director of lands told us that a public tour of the historic Thunderbird facilities was the only remaining justification for keeping the buildings on FS land. However, from our review of the current EA and conversations with the proponent, it appears that public tours may not occur for some time, if at all. A December 1998 draft of the EA prepared for the exchange proponent, stated that public tours of the Thunderbird Lodge would be limited in order to minimize the impact on the historic estate. The proponent told us that public tours would require modifying the existing structures to comply with the Americans With Disabilities Act. The proponent stated that this would be a costly undertaking and that it was currently not a part of the project plans.

FS lands staff should seriously assess whether it is still in the public interest to acquire the Thunderbird property with the structures intact. UNR's construction of a new research facility at a different location on the Thunderbird property will increase the level of development on land the FS is acquiring for preservation. In addition, the current lack of a purchaser for the Thunderbird structures makes their future use uncertain. Also uncertain is whether the new purchaser will be financially able to maintain the buildings and operate them in conformance with the terms of the reservation; for public tours, as a conference center, and for research-related activities.

FS lands staff have worked closely with BLM lands staff and BLM's chief appraiser to ensure that the public receives fair value in the Thunderbird land exchange. They have conducted periodic meetings with the land exchange proponent and have consistently sought the advice of their OGC counsel. The land exchange proponent has also worked to facilitate this exchange and has expressed its willingness to respond to FS and OIG concerns. Despite these efforts, ownership and responsibility for maintenance of the Thunderbird structures remain unresolved to this date.

The FS should seriously assess the consequences of going forward with the present plan and whether it is still in the public interest to acquire the Thunderbird property with the structures in place. Because UNR is no longer directly involved with the historic structures and final ownership and use is uncertain, the FS lands staff should restructure Phase 2 of the Thunderbird exchange to better meet National Forest System land management objectives. Acquiring the remaining Thunderbird acreage in its natural state, without the structures, would improve public access to the lake and use of the land, increase FS land management efficiency, and

better meet National Forest System land management objectives. If removal of the structures is possible, FS lands staff should require the proponent to restore the site to its natural, unencumbered state before proceeding with Phase 2 of the land exchange. The proponent should be responsible for all costs associated with the physical removal of the structures and any necessary historical mitigation. Removal of the structures and the restrictive reservation would not only relieve the FS of future administrative responsibilities (see Finding No. 2) but also increase the appraised values of Phase 2 lands for the proponent's benefit.

If, however, the structures cannot be removed prior to closing, FS lands staff, in consultation with OGC, should modify the current reservation. The reservation should specifically state that the proponent is responsible for the maintenance of the Thunderbird structures as long as they remain on FS land. This includes a provision requiring the maintenance of the structures in perpetuity if the reservation is terminated and the structures cannot be removed because of their historical nature.

Establishing an endowment fund ensures that there will be sufficient resources to maintain the structures. An endowment in the amount of \$6.9 million would provide \$300,000 annually over a 40-year period,³ which is the initial term of the deed reservation. If the annual maintenance costs increase, as they likely will, the deposited amount would need to be increased. This maintenance fund should be under the control of the FS and remain in existence as long as the Thunderbird structures remain in place on public land.

If the proponent locates a new purchaser for the structures and reserved area prior to completing the exchange, the FS lands staff should review the finalized agreements before proceeding with Phase 2 of the exchange. The purchaser should provide evidence as to financial ability, experience in the preservation of historic structures, and the intention to use the structures in a manner acceptable to the FS. Finally, the FS should confer with OGC on the status of the agreement relating to the structures prior to closing Phase 2 of the Thunderbird exchange.

³\$6.9 million would accumulate enough interest to keep the account solvent for 40 years if \$300,000 were withdrawn annually for maintenance costs.

RECOMMENDATION NO. 1a

If the proponent locates a new purchaser for the structures and reserved area, ensure that the proponent submits the signed agreements to the FS for its review prior to completing Phase 2 of the exchange.

RECOMMENDATION NO. 1b

In cooperation with OGC, review any agreements relating to final ownership and maintenance of the structures and ensure that the public's interest is protected prior to closing Phase 2 of the Thunderbird land exchange.

RECOMMENDATION NO. 1c

Modify the reservation language to make the owner of the structures legally responsible for the cost of maintaining them, in perpetuity, if the reservation is terminated and the structures cannot be removed from the land. The deed should also state that all development rights and land coverage associated with the Thunderbird parcel, including those rights being used under the reservation, are the property of the United States of America.

RECOMMENDATION NO. 1d

In addition to adding a maintenance provision to the reservation language, require the exchange proponent and its assignees to create an endowment fund sufficient to meet the costs of maintaining the Thunderbird structures for the period of their functional life, a minimum of 40 years.

RECOMMENDATION NO. 1e

If the proponent is unwilling to comply with the above recommendations concerning the structures and the reservation, do not proceed with Phase 2 of the land exchange until the proponent completes all necessary historical mitigation and restores the site to its natural condition free from any structures or encumbrances.

FINDING NO. 2

**FEASIBILITY OF PROPOSED USE
OF THUNDERBIRD SITE IS
QUESTIONABLE**

The feasibility of the uses proposed for the historic Thunderbird structures and the construction of the UNR research station is questionable. The water rights associated with the Thunderbird property are not sufficient to support a new research station and the existing structures. Existing sewage facilities may not be adequate for the expanded use

proposed for the site. In addition, TRPA approvals relating to the use of the existing structures and new construction have not been obtained. If the exchange proponent does not ensure that the projects are reasonably feasible prior to closing Phase 2 of the land exchange, the problems would be left for FS staff to administer.

Under the current land exchange proposal, the existing Thunderbird structures will be privately owned and operated as a conference center, for research-related activities, and for public tours. UNR will construct a new research station on a different portion of the property. The FS will not allow any other uses on the public land. Even though there is currently no purchaser for the existing structures, the FS is proceeding with the land exchange under the expectation that the proponent will find a purchaser willing to operate the historic structures under the terms specified by the FS.

The adequacy of water and sewage facilities, and TRPA approval are critical to the anticipated use of the existing structures and construction of a new research station. In order to evaluate the feasibility of the proposed projects, we interviewed FS lands staff, the exchange proponent, and representatives from TRPA and the State of Nevada Water Engineer's Office. We also reviewed the most recent EA prepared for the land exchange proponent. The EA analyzed the combined impact of 1) the construction of a new research facility by UNR on a portion of the Thunderbird property; and 2) the use of the historical facilities by a private party as a conference center, for research-related activities, and for public tours. We noted the following conditions that raise questions about the feasibility of the proposed projects:

a. Current Water Rights Are Not Sufficient

The water rights currently associated with the Thunderbird property are insufficient to support the proposed research station and expanded public use of the existing structures. The Thunderbird property has four water rights associated with it. These water rights were referred to in the Thunderbird appraisal and in the EA prepared for the proponent. The current residents of the Thunderbird Lodge were utilizing only one of the rights; Certificate No. 4334. The EA stated that Certificate No. 4334 was equivalent to 181 acre feet of water per year, and far exceeded the amount needed to supply the water needs of the proposed research station, conference center, and public tours. When FS lands staff closed Phase 1 of the land exchange in July 1998, they assumed that water rights associated with the Thunderbird property would support the uses specified in the FS reservation.

The four Thunderbird water rights were included in the approved value of \$40.5 million and represented an asset the public had paid for. However, the proponent did not convey these water rights to the FS when Phase 1 of the exchange closed. The proponent withheld the rights and assured the FS lands staff that all of the water rights would be conveyed in Phase 2. FS lands staff told us they agreed to let the proponent withhold the water rights as a gesture of their good faith.

We met with a Nevada State water engineer in November 1998, to confirm the existence and quantities of the Thunderbird water rights. At the time, our concern focused on the fact that the FS lands staff had allowed the proponent to retain ownership of the water rights instead of transferring them to the FS in Phase 1. At the volumes stated in the appraisal and the EA, these water rights represented a valuable asset.

The water engineer told us that three of the four water rights, including Certificate No. 4334 referred to in the EA, were for power generation and were not consumable. The engineer explained that the Lake Tahoe Basin is a fully appropriated site⁴ and that the State of Nevada would not allow the nonconsumable water rights to be changed to a consumable use.

This information had an immediate impact on the feasibility of the proposed research station and use of the existing structures. It also meant that the current residents of the Thunderbird Lodge were inappropriately using a nonconsumptive water right for their residential purposes. We contacted FS lands staff and told them that the Thunderbird property might lack sufficient water to operate the proposed projects. The nonconsumable status of three Thunderbird water rights came as a complete surprise to FS lands staff.

In February 1999, we contacted the exchange proponent to discuss the status of the Thunderbird water rights. The proponent told us that it had hired two water attorneys to research the water rights and determine whether they could be converted to a consumable use. The water attorneys told the proponent that the existing Thunderbird water rights were not desirable. The proponent stated that it had optioned⁵ an alternative water right to ensure that the Thunderbird property had enough water to support the operation of the Thunderbird estate and UNR's research facility.

In order to use the optioned water right on the Thunderbird property, the water right's current owner must submit an application to the State of Nevada to transfer the location of the water right to the Thunderbird site and to modify its stated use. We contacted the State of Nevada to determine if the

⁴No one in the Lake Tahoe basin can apply for new water permits from the State of Nevada. Anyone wishing to acquire a water right must purchase an existing right from current permit holders in the basin.

⁵ An option is a bilateral contract in which one party is given the right to buy the property within a period of time for a consideration paid to the seller.

required change applications had been made. A water engineer reviewed the files and told us that no application had been made as of that date. He also told us that changing a water right's use and location is a time-consuming process that could be denied if the requested changes are not acceptable to the State of Nevada or if other water users protest the change.

b. **Existing Sewer Capacity May Be Inadequate for Proposed Use**

The existing sewage holding tanks may be inadequate to service the proposed research station and the expanded public use of the existing Thunderbird structures. The EA stated that the proposed construction of the research station, and use of the existing structures as a conference center and for public tours would generate additional sewage. The EA concluded that the property's existing holding tanks were sufficient to accommodate the increased use of both projects if the tanks were emptied more frequently. Use of the existing holding tanks was the only economically feasible alternative. The exchange proponent had already stated that it would not connect the Thunderbird structures to the sewer lines in the area because the cost was prohibitive (at least \$3 million).

The EA estimated that the two permanent residents at the Thunderbird Lodge generated about 50,000 gallons of wastewater (gray water and sewage) per year. The EA stated that the wastewater generation would increase to about 332,000 gallons per year when the new projects were implemented. Sewage would continue to be collected in three 4,000-gallon underground holding tanks and would be transported from the site, and out of the Lake Tahoe Basin, by pump truck. Transportation of the waste from the sewage holding tanks would increase from about once per month presently, to a maximum of 10 times per month during peak usage.

Using data in the EA, we calculated that about 65 people per day would use or visit the historic structures and the UNR research facility during the 8-month peak period. About 44 of the users (68 percent) would be conference attendees, research scientists, students, and support staff. The remaining 21 users (32 percent) would be tourists visiting the historic structures. Based on the EA estimates, we calculated that daily users of the facilities could generate only 6 gallons of waste per day, compared to the 100 gallons of waste per day currently being generated by each of the two full-time residents of Thunderbird Lodge. The annual waste estimated in the EA is not realistic. Even at these low levels of anticipated use, the EA determined that the holding tanks would have to be emptied two to three times per week.

The EA assumed that TRPA would approve the use of the existing holding tanks and the increased frequency of sewage withdrawal by tank trucks. TRPA approval is critical because the sewage holding tanks are the only proposed option. In February 1999, we contacted TRPA staff to discuss the proposed use of the Thunderbird holding tanks. The TRPA project manager told us that he

had not seen the EA and had not received any data on the projected use of the holding tanks. He told us that it is impossible for TRPA to know whether use of the tanks will be acceptable until they have received and analyzed data. The project manager said that in addition to the 65 visitors, he assumed the UNR research station would include laboratories which would use unspecified amounts of water. He told us the number of individuals staying overnight at the historic lodge or at the research station would also have a large impact on the amount of waste generated. The project manager said that TRPA will use a reasonability test when it decides whether UNR and the owner of the structures can use the existing holding tanks. He said that emptying the holding tanks three times per week (the amount estimated in the EA) would be considered excessive.

c. Approvals From TRPA on New Construction and Proposed Uses Not Obtained

The exchange proponent and UNR have not obtained TRPA approvals for the construction of the research station and the uses proposed for the existing structures. When FS lands staff processed Phase 1 of the Thunderbird land exchange, they presumed that UNR would build its research station over the existing boathouse and use the Thunderbird Lodge for other research-related activities. However, shortly before Phase 1 closed, it became clear that TRPA would not allow UNR to build its research facility on existing structures near the lake. Consequently, UNR had to modify its original plan and now intends to construct a new research station at a different location on the property.

In the Lake Tahoe Basin, TRPA must approve new construction and new commercial uses of existing structures. In December 1998, we questioned FS lands staff about the status of the TRPA approvals of the Thunderbird projects. At the time of our interview, UNR planned to build a new research facility and the nonprofit organization intended to use the existing Thunderbird structures as a conference center, for public tours, and research-related activities. FS lands staff told us that they did not know the status of either project. They had the impression that the exchange proponent was working with UNR and the nonprofit organization to secure the necessary TRPA approvals.

We then contacted the exchange proponent to obtain information about the status of the projects and their approval. The proponent told us that the nonprofit's use of the existing structures and UNR's construction of a research station were still in the planning stage. The proponent said it was the responsibility of the nonprofit organization and UNR to obtain the required TRPA approvals and permits.

Finally, we interviewed TRPA staff to determine if the proponent, the nonprofit organization, or UNR had presented TRPA with any project plans. (At this time the nonprofit organization still intended to purchase the historic Thunderbird structures. It withdrew from the project about a week after our discussion with TRPA

staff.) The TRPA project manager told us that no one had submitted any type of project application to TRPA. Currently there are no TRPA approvals for construction of the new research station or the planned use of the existing Thunderbird structures. The project manager told us that TRPA avoids giving any sort of conceptual approval without being provided a complete and detailed application.

In our initial meetings with FS lands staff, the staff told us that the FS would not finalize Phase 2 of the Thunderbird land exchange until UNR and the nonprofit organization received the necessary permits from TRPA and had their projects approved. However, in a recent conversation, the FS lands staff modified their position. They explained that TRPA project approvals may not be available by the time Phase 2 of the land exchange closes. In an effort to be fair to the land exchange proponent, FS lands staff personnel are currently trying to decide on the type of documentation they will require from the proponent before closing Phase 2.

It is the proponent's responsibility to guarantee that the Thunderbird projects are reasonably feasible prior to closing Phase 2 of the land exchange. Anything less would transfer the administrative burden and responsibility to the FS to resolve with UNR and any new owner of the historic structures at a later date. As part of the Federal land exchange, the proponent will receive title to Federal lands in Las Vegas that are unencumbered and ready for the proponent's development. At a minimum, the FS is entitled to the same privilege of receiving the Thunderbird lands that are likewise unencumbered and free from any excessive administrative burden or responsibility.

It is important that the FS lands staff determine whether the uses specified in the reservation can actually be accomplished before closing Phase 2 of the exchange. Any new EA prepared for the land exchange should be critically examined and supported by reasonable analysis. The proponent should submit the required change applications to the State of Nevada to transfer the optioned water right's location and use. Evidence that this change has been applied for and approved, should be obtained from the Nevada Division of Water Resources before the FS proceeds with Phase 2 of the exchange. FS lands staff should also identify the amount of water (acre feet) that has been optioned by the proponent and determine whether the amount will support the proposed research station, Thunderbird Lodge, and the other structures.

Data supporting the anticipated sewage requirements for the UNR research station, the Thunderbird Lodge, and other structures should be presented to TRPA. The FS should verify that TRPA has reviewed and has approved the adequacy of the existing holding tanks or some other acceptable alternative. FS lands staff should also ensure that TRPA officials and other applicable regulatory agencies have reviewed project plans for UNR's new research facility and the uses proposed for the Thunderbird structures. The proponent should be required to obtain TRPA approvals and present them to the FS before closing Phase 2 of the land exchange.

RECOMMENDATION NO. 2a

Critically examine any new EA submitted by the exchange proponent for the land exchange to ensure that all assumptions are supported by reasonable analysis.

RECOMMENDATION NO. 2b

Ensure that the exchange proponent submits the required change applications to the State of Nevada to transfer the optioned water right's location and use. Obtain evidence of the application and approval before proceeding with Phase 2 of the exchange.

RECOMMENDATION NO. 2c

Identify the amount of water (acre feet) that has been optioned by the proponent and determine whether the amount will support the proposed future use of the Thunderbird site. Ensure that the existing water use at the site conforms to its legal use.

RECOMMENDATION NO. 2d

Ensure that the exchange proponent presents data to TRPA showing the anticipated sewage requirements for the UNR research station, the Thunderbird Lodge, and other structures and that TRPA has reviewed and approved the adequacy of the existing sewer holding tanks or some other acceptable alternative.

RECOMMENDATION NO. 2e

Ensure that TRPA officials and other applicable regulatory agencies have reviewed project plans for UNR's new research facility and the uses proposed for the Thunderbird structures. Require the exchange proponent to obtain TRPA approvals before closing Phase 2 of the exchange.

EXHIBIT A - SUMMARY OF MONETARY RESULTS

RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
1d	Establishment of an endowment fund for maintenance of historic structures. This would provide sufficient funds to cover estimated maintenance costs over a 40-year period.	\$12,000,000 ⁶	FTBPTBU ⁷ - Management Or Operating Improvement/ Savings
TOTAL		\$12,000,000	

⁶This amount would be increased if the functional life of the structures exceeds 40 years.

⁷ Funds To Be Put To Better Use