

Chapter I

Purpose and Need For Action

INTRODUCTION

The Forest Service and a private landowner are considering a proposed land exchange on the Lewis and Clark National Forest, within the Tenderfoot Creek area of the Little Belt Mountains, approximately 30 miles north/northwest of White Sulphur Springs, Meagher County, Montana.

Chapter I provides summary and background information regarding the Taylor Hills land exchange proposal, identifies the purpose and need, the scope of the proposal and the analysis, the responsible official and decision to be made, public scoping and issue resolutions. Map 1, Taylor Hills Land Exchange Map is a general vicinity map displaying the location of the proposed land exchange parcels and rights-of-way (ROW) acquisition by the Forest Service and private landowner.

This Environmental Assessment (EA) addresses a proposal to convey 158.83 acres of National Forest System (NFS) land in two parcels near the junction of Tenderfoot Creek and South Fork Tenderfoot Creek and adjacent to the Zehntner Brothers LLC Ranch, herein referred to as Federal "Parcel F1 and Parcel F2" (Maps 2 and 3), in exchange for the Forest Service acquisition of 151.52 acre private inholding, the Taylor Hills Homestead Entry Survey (HES)185 tract located 5 miles easterly in the upper Tenderfoot drainage, owned by Zehntner Brothers LLC (Zehntner), referred to as Parcel Z1 (Map 4). Maps 2, 3 and 4 are ortho-digital photo displays of the two Forest tracts F1 and F2, and the Taylor Hills HES 185 tract Z1, proposed for exchange.

Parcel Z1 (HES 185) is traversed by 1.2 miles of NFS Trails, Taylor Hills Trail No. 344 and Taylor to Placer Trail No. 351, presently without benefit of deeded ROW. The exchange would resolve these ROW issues because it results in HES 185 and the trails thereon coming into National Forest ownership.

Included in the proposed action is an offer by Zehntner to grant road ROW on approximately 0.91 miles of road within Zehntner property on the roadway into Tenderfoot Creek. This includes 0.67 miles on the South Fork Tenderfoot NFS Road No. 6424 and 0.24 miles on Tenderfoot NFS Road No. 6372). In addition, the landowner would grant a bridge crossing ROW across Tenderfoot Creek on an existing bridge at the terminus of Tenderfoot NFS Road No. 6372 (53 feet), as well as grant 2.07 miles of trail ROW on the north side of Tenderfoot Creek (1.26 miles along Tenderfoot Creek NFS Trail No. 342 and 0.81 miles along Bald Hills NFS Trail No. 345) to assure perpetual public access.

Also included in the proposed action is a reciprocal ROW agreement from the Forest Service to grant Forest road easements to Zehntner on approximately 0.66 miles of Forest roads in order to assure long term access into their private inholdings for agricultural

purposes. These easements would be placed on NFS Roads Nos. 6424 and 6372, and a road segment of NFS Trail No. 342.

Also included is a reservation (retention) of road ROW by the United States, Forest Service in conveyance Parcel F1 on a small segment of NFS Road No. 6424 to maintain complete public road ROW on the road system down to Tenderfoot Creek.

BACKGROUND INFORMATION

Howard Zehntner owns the isolated 151.52 acre Taylor Hills HES 185 which is surrounded by NFS lands within the Tenderfoot-Deep Creek Inventoried Roadless Area (I-726). The homestead is located on a south facing aspect about 2 miles down slope and south from the Logging Creek/Tenderfoot Creek divide at the Taylor Hills trailhead. The homestead is located at approximately 6,100 feet elevation. From the homestead, the terrain drops steeply to the south, about $\frac{3}{4}$ mile to Tenderfoot Creek. A log cabin, barn and storage shed are located on the property.

The Zehntner Brothers Tenderfoot ranch headquarters is located five miles west of HES 185 and downstream on Tenderfoot Creek, near the junction of Tenderfoot Creek and South Fork Tenderfoot Creek. The ranch headquarters adjoins an array of intermixed ownership and irregular boundaries (National Forest, State, and private) See Map 1. Zehntner's desire is to consolidate their ownership for management efficiency.

In 2002, Zehntner Brothers LLC submitted an application to the Forest Service to construct approximately $4\frac{1}{2}$ miles of timber haul road to access and harvest timber from their private homestead inholding (HES 185). The road would begin near the Taylor Hills trailhead and switch-back down slope and across existing NFS Trail No. 344. An in-holder has rights of reasonable access into private inholdings isolated by NFS lands. In this case, under the condition that reciprocal public access to isolated public lands is granted by the in-holder.

Identified concerns of the proposed road construction included potential impacts to Inventoried Roadless Area values, impacts to wildlife habitat, slash and debris damages to trails from private logging with the potential for closure of NFS Trail No. 344 and Trail No. 351. In addition, soil and water erosion caused by road building and timber harvest on these slopes might impact Tenderfoot Creek, a high quality westslope cutthroat trout fishery. Forest Service personnel and Zehntner's felt there must be a better solution to common management needs rather than creating additional issues through construction of the 4.5 miles of access road and harvest of timber across the homestead inholding. Discussions ensued and agreement was reached to consider a mutually beneficial land exchange and ROW acquisition.

Zehntner ownership near the ranch headquarters includes 0.91 miles of Roads No. 6424 and 6372 (in two segments) which provide access into NFS lands along Tenderfoot Creek area. The USDA, Forest Service does not have ROW on these roads and NFS lands along Tenderfoot Creek are effectively 'land-locked' by private lands from vehicle

access. Zehntner's granting this ROW would provide public road ROW on the sole and historic road route into Tenderfoot Creek, providing connection to the extensive trail system extending upstream and downstream along Tenderfoot Creek.

The County and State segments of Road 6424 allow public access to the boundary of private ownership in Section 30, at which point no public road ROW exists at this time. From that point over the next mile of Road 6424 and 6372, the present good-will of the Zehntner Ranch allows public vehicle access down into the Tenderfoot Creek bridge vicinity and the associated trails and informal road system on the north side of Tenderfoot Creek, during the spring and summer seasons.

Parcels F1 and F2 are not destinations as these are relatively isolated timber areas that are adjacent to or nearly surrounded by private ownership, and do not have road or trail access to their interior areas.

During the fall hunting season however, a lock gate has been installed by the Zehntner Ranch near the ranch buildings, stopping vehicle traffic ½ mile prior to entering private land in Section 30. Because this lock gate site has provided a safe turn-around location, the public has not complained about being stopped ½ mile prior to the actual private boundary, otherwise the lock gate would be located at the top of the steep road pitch with no turn-around facility at the actual Section 30 private boundary.

This good-will access has in the past allowed public vehicle travel to drive across Tenderfoot Creek Bridge and connection to the extensive Forest Service trail system on the north side of Tenderfoot Creek (Trail 342 motorcycle trail and Trail 345 ATV/motorcycle trail). This good-will access has also allowed public vehicle travel within the private lands to drive downstream about ½ mile on the trail as rebuilt as logging road, to the Tenderfoot Falls overlook, and also to drive upstream about ¼ mile on a user created 2-track road into a user developed dispersed camping area that is actually on NFS lands. The Forest Service is now closing that dispersed camping area.

The Zehntner Ranch has had management problems the past couple of years with motorized trail users, and has indicated they will close their private lands on the north side of Tenderfoot Creek to all motorized vehicle travel. The LCNF Forest Travel Plan decision, signed in 2008, closes Forest travel routes on the north side of Tenderfoot Creek to all motorized traffic.

Public trail use across HES 185 is open by the good-will of the Zehntner Ranch for Trails 344 (ATV/motorcycle trail) and 351 (motorcycle trail). These two trails junction within HES 185.

Two parcels of NFS lands totaling 158.83 acres, which are located contiguous to the Zehntner ranch and landlocked to public access, were identified as potential exchange parcels. The private Taylor Hills HES 185 totaling 151.52 acres was identified for acquisition, along with the noted public access needs. Later, reciprocal road easement ROW needs for Zehntner were identified, thereby completing the proposed land

exchange and reciprocal ROW acquisition package. A valuation consultation determined the exchange packages to be of approximate equal value.

An **Agreement to Initiate** (ATI)¹ the land exchange between Zehntner and the United States was formally signed on March 27, 2007 by landowner Howard Zehntner and by Lewis and Clark National Forest Supervisor Lesley W. Thompson.

PURPOSE AND NEED FOR THE PROPOSED ACTION

The overall purpose and need for the proposed exchange and acquisition of easements is to:

- Maintain wildland values and roadless characteristics of the Tenderfoot-Deep Creek Inventoried Roadless Area, including the Taylor Hills Homestead HES 185 inholding;
- Maintain high quality wildlife habitat and maintain undisturbed watersheds downslope in Tenderfoot Creek for Westslope cutthroat trout habitat;
- Acquire and perfect needed public access ROW to assure trail access across HES 185, public road access into the South Fork of Tenderfoot Creek, and public trail access in the Tenderfoot and South Fork Tenderfoot Creek areas;
- Consolidate land ownership for consistent land management objectives.

In addition to protecting wildland values and acquiring and perfecting public access, other benefits of the exchange and acquisition ROW include:

- Protect 1.2 miles of trail within HES 185 from logging impacts. This trail is presently open by good will courtesy of the landowner;
- Maintain other resources on HES 185, including recreation use, soils, and visual aesthetics;
- Acquire and perfect the final 0.91 miles of public road ROW into Tenderfoot Creek for public recreation access. This route is presently open by good will courtesy of the landowner.
- Acquire and perfect 2.07 miles of public trail ROW for Trails 342 and 345, as public ROW into and along Tenderfoot Creek, presently open as good will courtesy of the landowner;
- Consolidate NFS land for management efficiencies, as identified in the Forest Plan;
- Assure current public uses in these areas can continue.

¹ AN ATI is a non-binding document that identifies the parcels of Federal and non-Federal land considered for exchange. It also describes the terms and conditions of the proposed exchange, how the costs of completing an exchange will be shared between the two parties, and includes a proposed schedule for implementation.

- Management of Federal lands will be more efficient because 3.2 fewer miles of boundary line will need survey and maintenance, and 3.7 miles of needed easements/ agreements for private roads and trails will be eliminated.

PROPOSED ACTION

The United States would acquire the following lands and road and trails ROWs located in Meagher County, Montana:

- Fee title (surface and mineral estate) to 151.52 acre Taylor Hills homestead HES 185, located within Sections 13 and 14, T14N, R5E and Sections 18 and 19, T14N, R6E. This action would eliminate the need to acquire 1.2 miles of trail ROW on Trails Nos. 344 and 351.
- One minor water right in HES 185 for stock use at the rate of 10 gallons per minute (gpm) and total annual volume of 2 acre-feet, with a priority date of December 31, 1917.
- 0.91 miles of public road ROW, 66 feet wide, on Roads Nos. 6424 and 6372, located within Section 30, T14N, R5E through Zehntner property, thereby securing public road access to the South Fork Tenderfoot Creek area and the Forest Service trail system along Tenderfoot Creek;
- One 53 foot trail bridge ROW, 66 feet wide, on an existing private bridge crossing of Tenderfoot Creek at the terminus of Road No. 6372, located within Section 30, T14N, R5E, thereby providing access to the NFS trail system on the north side of Tenderfoot Creek;
- 2.07 miles of public trail ROW, 20 feet wide, on Trails Nos. 342 and 345, located within Sections 19 and 30, T14N, R5E, and Sections 24 and 25, T14N, R4E, thereby securing public trail ROW on the existing trails through the Zehntner private property, connecting with the road and bridge ROW access from the South Fork Tenderfoot Creek road, connecting with the Tenderfoot Creek NFS Trail No. 342 traversing up and down Tenderfoot Creek, and connecting with Bald Hills NFS Trail No. 345 that traverses north-easterly out of Tenderfoot Creek;
- Retain 447 feet of public road ROW reservation, 66 feet wide, on existing NFS Road No. 6424, located in Section 30, Government Lot 18, as part of the conveyance of Lot 18 to Zehntner, thereby retaining needed public road ROW to Tenderfoot Creek.

The United States would convey the following lands and authorize the following road easements to Zehntner property located in Meagher County, Montana:

- Fee title (surface and mineral estate) to 81.82 acres NFS land Parcel F1, located within Section 30, Lots 16, 18, 19 and 20, T14N, R5E, and;

- Fee title (surface and mineral estate) to 77.01 acres NFS land Parcel F2, located within Section 32, Lots 1, 2 NW¹/₄NE¹/₄NW¹/₄, S¹/₂NE¹/₄NW¹/₄, T14N, R5E;
- A total of 158.83 acres, with both parcels adjoining Zehntner owned or managed properties and thereby consolidating Zehntner Ranch management;
- Authorize 1556 feet forest road easement on NFS Road No. 6372, Section 30, Lot 14, T14N, R5E, as 66 foot wide reciprocal road access into Zehntner property along Tenderfoot Creek.
- Authorize 440 feet forest road easement on NFS Road No. 6424, Section 30, Lot 14, T14N, R5E, as 40 foot wide reciprocal road access into Zehntner property at west end of HES 668; and
- Authorize 1506 feet forest road easement on road segment of NFS Trail No. 342, Section 30, Lot 15, T14N, R5E, as 40 foot wide reciprocal road access into Zehntner property on north side of Tenderfoot Creek.

RESPONSIBLE OFFICIAL, SCOPE OF THE ANALYSIS, AND DECISION TO BE MADE

The USDA Forest Service is the lead agency for this analysis. The responsible official is Lesley W. Thompson, Forest Supervisor, Lewis & Clark National Forest, whose authority is delegated by the Director of Recreation, Minerals, Lands, Heritage and Wilderness for the Northern Region.

The scope of the decision is limited to the land exchange proposed by the proponent and the Forest Service and the ROWs acquired and granted by the Forest Service.

If, based on the analysis in this EA and the public comments received, the Responsible Official determines that preparation of an EIS is not needed, then a “Decision Notice” (DN) and Finding of No Significant Impact (FONSI) will be prepared. The DN will document the decision of whether to proceed with the land exchange as proposed and the rationale for making that decision. The FONSI will document the rationale for reaching a finding that the action will not result in significant effects to the human environment.

THE BEST INTEREST OF THE PUBLIC

When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives. {36CFR 254.3 (b)(1)}

To determine that an exchange is in the best interest of the public, the authorized officer must find that {36CFR 254.3 (b)(2)}:

- Resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed, and;
- The intended use of the conveyed Federal lands will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust Lands.

Lands or interests to be exchanged must be of equal value or equalized by procedures specified in 36 CFR 254.12, through modification of the exchange proposal, or cash equalization not to exceed 25% of the value of the Federal lands. Land appraisals are completed, reviewed and approved by certified appraisers in accordance with Federal standards.

The Federal and non-Federal lands identified for exchange as well as the rights-of-way (grants and acquisitions) have been appraised in accordance with Federal standards.

The appraisal reports for the Federal and non-Federal estates were completed on October 17, 2007 by Forest Service appraiser Kathleen Lowry-Rickett, ARA. Both reports were reviewed by Forest Service Qualified Review Appraiser, C. Kim Zier on December 13, 2007. The current approved appraisals remain valid until October 7, 2008.

The current estimated market value of the non-Federal estate considered for exchange, comprising of 151.52 acres is \$380,000. The current estimated market value of the Federal estate, comprising of 158.83 acres is \$358,000. The proposed exchange acknowledged that a payment may be required by either party to equalize the exchange. In this case, the Forest Service will make a payment of \$22,000 (16% value of the Federal estate) to Zehntner to equalize this land exchange..

REGULATORY FRAMEWORK FOR LAND EXCHANGES

This proposed land exchange is being considered under the authority of the General Exchange Act of March 20, 1922, as amended (16 U.S.C. 485, 486), the Federal Land Management and Policy Act of 1976, as amended (43 U.S.C. 1715-1717) and the Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1716(note), 751(note)).

Direction concerning land exchanges is given in the Code of Federal Regulations, Title 36, Part 254, Subpart A, 254.3. Land exchanges are discretionary, voluntary real estate actions between Federal and non-Federal parties. Until the parties enter into a legally binding exchange agreement, any party may withdraw from and terminate an exchange proposal at any time during the exchange process. The authorized officer may complete an exchange only after a determination is made that the exchange is in the best interest of the public.