

# Appendix C

## Land Exchange Process

Land exchanges involve three phases that may overlap slightly in time: 1) the Land Exchange Proposal Phase, 2) the NEPA/Appraisal Phase, and 3) the Land Title Transfer and Closing Phase. The first phase involves initial discussions and a non-binding agreement to exchange lands, along with the completion of various technical studies. The second phase involves the completion of the environmental analysis, documented in either an EA or an Environmental Impact Statement (EIS), if the proposed action is not categorically excluded from such documentation, as per FS Manual 1909.15, Chapter 30. This phase also involves the final appraisal and decision to complete the exchange. The third phase involves executing the binding exchange agreement and the actual exchange of title to the lands and closing the transaction. These three phases are discussed in more detail below.

The land exchange process includes some procedures that are open for public review and others that are confidential. The NEPA process and the associated FS implementing regulations provide for an open public review process. The process of developing a land exchange proposal, however, is essentially a business negotiation between the non-Federal and Federal landowners. In this process, non-Federal landowners share confidential or proprietary information with the Federal landowner. Additionally, prior to signing the exchange agreement, either party to a land exchange may withdraw from the proposal. Because of the confidential business information shared between the two parties as well as the possibility of withdrawal from the Proposed Exchange, the appraisal and associated records are exempt from public disclosure until the exchange agreement is executed. Requests for appraisal information must be made under the Freedom of Information Act (FOIA). Certain appraisal information is exempt from disclosure under the FOIA procedures and may not be released.

## Land Exchange Proposal Phase

The first phase of the land exchange process leads to an Agreement to Initiate (ATI) an exchange. The first step involves the negotiations that take place between the FS and the non-Federal landowner. Land exchanges are voluntary agreements and must be advantageous to both parties in order to take place. Based on these negotiations, the parties develop a mutually agreeable exchange proposal.

A Feasibility Analysis is done to insure that the proposal is consistent with the Forest Resource Management Plans and with the requirements of applicable laws and regulations. A review is also made of the public interest benefits of the exchange pursuant to 36 CFR 254.3(b). Certain exchange proposals, usually those with the value of the Federal land expected to be over \$500,000, are reviewed by the FS National Landownership Adjustment Team to insure that the proposal is consistent with FS authorities, regulations, policies and procedures. If it is determined that the proposal is feasible, the ATI for the exchange can be executed. The ATI is a non-binding agreement between the FS and exchange proponent setting out the terms and conditions for completing the exchange. The ATI also includes a tentative time schedule and assignment of responsibilities for completion of the exchange. Upon signing the ATI, a Notice of Exchange Proposal (NOEP) is prepared to give public notice that the proposal is being considered and

comments are requested. The NOEP is sent to interested parties and is published in local newspapers once a week for four consecutive weeks.

After an ATI has been signed, environmental responses are prepared concerning pertinent issues such as minerals, cultural resources, threatened and endangered species, and timber resources. During this time, discussions may also occur with interested parties, such as local communities, environmental groups, and other governmental agencies. Toward the end of the first phase, the NEPA and appraisal processes are initiated.

### **NEPA/Appraisal Phase**

The second phase begins when the draft exchange proposal and the environmental responses are completed or nearing completion and the potential for the land exchange to actually occur becomes apparent. With the initiation of the NEPA process, public and agency scoping and public involvement continues. Issues are identified, alternatives are developed, and the environmental analysis is conducted and documented. In this instance, the analysis is documented in an EIS. The final decision will be documented in a Record of Decision.

In this phase the appraisal of both the Federal and non-Federal lands is prepared. The appraisal is prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition. These documents require that the land and interests associated with the land be appraised to the highest and best use. Values of both the Federal and non-Federal lands are based upon the private, open market, not value to the government or proponent. The appraisal prepared for the land exchange is reviewed by a qualified review appraiser to ensure that it is acceptable and complies with the appropriate standards. The appraised value of the lands will be shown in the Record of Decision. Under the Federal Land Policy and Management Act of 1976, all exchanges must be equal in value. FS regulations at 36 CFR 254.3(c) require that exchanges must be of equal value or equalized pursuant to 36 CFR 254.12 by cash payment, after making all reasonable efforts to equalize values by adding or deleting lands. If lands proposed for exchange are not equal in value, either party may make them equal by cash payment not to exceed 25 percent of the Federal land value. The amount of any cash equalization payment must be kept to a minimum.

Prior to issuance of the ROD, the National Landownership Adjustment Team will make a second review of those exchanges it had reviewed in the first phase. Once the ROD is issued, a Notice of Decision (NOD) is prepared and sent to interested parties and published one time in local newspapers. The NOD briefly describes the decision made and provides directions for obtaining a copy of the decision.

### **Land Title Transfer and Closing Phase**

After the NEPA/Appraisal phase, the third phase of the land exchange process begins. During this final phase, both parties agree to the appraised land values and mix of lands and/or cash equalization, and a binding exchange agreement is prepared and signed. Additionally, at this stage there is a review of the exchange agreement by the appropriate Regional Office of the FS. These approvals are necessary for the exchange agreement to be implemented. Final processing steps involve the transfer of land title by exchanging of deeds and patent, usually through a simultaneous escrow closing procedure and obtaining final title insurance to assure clear title. A final title opinion by the FS and its Office of the General Counsel is obtained and posting of land records is accomplished completing the exchange process.