



UNITED STATES DEPARTMENT OF
THE INTERIOR BUREAU OF LAND
MANAGEMENT
MANUAL TRANSMITTAL SHEET

Release

2-297

Date

08/20/07

Subject

H - 2200-1 Land Exchange Handbook (public)

1. Explanation of Material Transmitted: Chapter 8, Resolving Values Disputes, was reserved in the Land Exchange Handbook released on August 29, 2005, and updated on December 16, 2005. This release transmits Chapter 8 for the Land Exchange Handbook. Chapter 8 provides specific guidance for avoiding and resolving value disputes in land exchanges, including the utilization of alternative valuation processes, including bargaining.

As described in the BLM Directives manual (1221.13), handbook and manual sections have equal force and effect, and instructions provided in this Handbook are mandatory unless otherwise indicated.

2. Reports Required: None.

3. Material Superseded: The material superseded by this release is listed under "REMOVE" below. No other directives are superseded.

4. Filing Instructions: File as directed below.

REMOVE:

Table of Contents Pages TC3 to
TC6

All of Rel. 2-294 Page 8-1

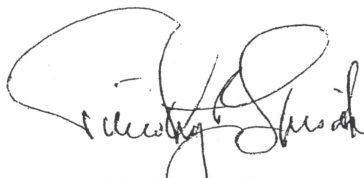
(Total: 3 sheets)

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Table of Contents Pages TC3 to TC6

Pages 8-1 to 8-10

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for Michael D. Nedd
Assistant Director
Minerals, Realty and
Resource Protection



UNITED STATES DEPARTMENT OF
THE INTERIOR BUREAU OF LAND
MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release

2-294

Date

12/16/05

Subject

H - 2200-1 Land Exchange Handbook (public)

1. Explanation of Material Transmitted: This release transmits an updated Land Exchange Handbook. The Handbook provides specific guidance for the consideration of land exchanges to ensure that statutory and regulatory requirements are followed and that the public interest is protected. It provides further direction related to the objectives, authorities, responsibilities, and policy considerations outlined in Manual Section 2200, Exchange of Public Lands.

As described in the BLM Directives Manual (1221.13), handbook and manual sections have equal force and effect, and instructions provided in this Handbook are mandatory unless otherwise indicated.

Change: This release transmits pen and ink corrections to Release 1-1695 dated 08/29/05. The release number assigned is incorrect. Please change Rel. 1-1695 on (1) the manual transmittal sheet in upper right corner and under "insert" and (2) on all Handbook sheets in the footer section on lower right side to **Rel. 2-294**.

2. Reports Required: None.
3. Material Superseded: Handbook H-2200-1 Release Number 2-286, dated August 14, 1997 and Release Number 2-288, dated June 4, 1999.
4. Filing Instructions: File as directed below.

REMOVE:

All of Rel. 2-286 and 2-288

(Total: 76 sheets)

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All of Rel. 2-294 (H - 2200-1)

(Total: 91 sheets)

Thomas Lonnie
Assistant Director
Minerals, Realty and Resource
Protection



UNITED STATES DEPARTMENT OF
THE INTERIOR BUREAU OF LAND
MANAGEMENT
MANUAL TRANSMITTAL SHEET

Release

~~1-1695~~ 2-294

Date

08/29/05

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2. Reports Required: None.

3. Material Superseded: Handbook H-2200-1 Release Number 2-286, dated August 14, 1997 and Release Number 2-288, dated June 4, 1999 (Chapter 7 and 8).

4. Filing Instructions: File as directed below.

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(Total: 91 sheets)

Thomas Lonnie
Assistant Director
Minerals, Realty and Resource
Protection



Bureau of Land Management



Land Exchange Handbook H-2200-1 (Public)

H-2200-1 LAND EXCHANGE HANDBOOK (Public)

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Chapter 1 - Overview of Land Exchange Processing Requirements

A. Introduction, the Need for Detailed Guidance, and Organization of the Handbook

Land exchanges are an important tool to consolidate land ownership for more efficient management and to secure important objectives of resource management, enhancement, development and protection; to meet the needs of communities; to promote multiple-use management; to foster sustainable development and to fulfill other public needs. However, BLM will evaluate and consider the full range of land disposal and acquisition tools available to accomplish these objectives prior to proceeding with a land exchange proposal.

Proper consideration of land exchange proposals involves a substantial investment of time and resources by both Federal and non-Federal parties. Land exchange processing is often highly complex because of the wide range of individuals and entities that hold some form of valid right, title, or interest in the land being considered for exchange, determining land values, weighing public interests and effectively involving the public in the process.

This Handbook has been developed to ensure statutory and regulatory requirements are followed, and that the public interest is properly considered and protected in evaluating land exchange proposals. As described in the BLM Directives Manual (1221.13), handbook and manual sections have equal force and effect, and instructions provided in this Handbook are mandatory unless otherwise indicated.

The organization of this Handbook follows land exchange processing steps. To the extent practical, references have been provided to clarify how certain exchange processing steps are linked or related. Please refer to Illustration 1-1 for an outline of typical land exchange processing steps and responsibilities.

B. Authority for Land Exchanges

1. Basic Authorities. Land exchanges are generally conducted under the authority contained in Sections 102, 205, 206 and 207 of the Federal Land Policy and Management Act (FLPMA, 90 Stat. 2743; 43 U.S.C. 1715, 1716 and 1717). FLPMA was amended in 1988 by the Federal Land Exchange Facilitation Act (FLEFA, 102 Stat. 1087). FLEFA contains provisions to facilitate and expedite land exchanges by establishing uniform rules and regulations for appraisals, and procedures and guidelines for resolution of appraisal disputes.

FLPMA Sections 205, 206 and 207, as amended, establish five requirements for land exchanges. The requirements are:

- *“Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.”* (Sec. 205 (b)).
- *“...the public interest will be well served by making that exchange...”* (Sec. 206 (a)). [See detailed explanation of public interest documentation requirements in Chapter 9, B.1.]

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- *“...the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired.” (Sec. 206 (b)).*
 - *“The values of the lands exchanged...either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of payment of money to as small an amount as possible.” (Sec. 206 (b)).*
 - *“No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States.” (Sec. 207).*
2. National Forest System Exchanges. Act of March 20, 1922, as amended (16 U.S.C. 485,486); Act of March 1, 1911, as amended (16 U.S.C. 516); Act of July 22, 1937, as amended (7 U.S.C. 1011); Act of October 23, 1962 (16 U.S.C. 555a); Sections 205 and 206 of the Act of October 21, 1976 (43 U.S.C. 1715, 1716); and other applicable laws. (Refer to 36 Code of Federal Regulations (CFR) 254.)
 3. State Exchanges. Section 8(c) and (d) of the Taylor Grazing Act (43 U.S.C. 315g, 315g-1, and 315p) as to applications made prior to October 21, 1976, and which meet the criteria set forth in Dale E. Armstrong, 53 IBLA 153 (1981). (Not codified after 1980.)
 4. Miscellaneous Exchanges. Exchanges are also authorized under the following statutes and regulations:
 - National Wilderness Preservation System exchange, Section 5 of the Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1134); 36 CFR 254, as to National Forest System exchanges; 43 CFR 2200 and 2201 - as to public lands (refer to Section 603(c) of FLPMA).
 - National Wildlife Refuge System exchanges, Sections 2 and 4 of the Act of October 15, 1966 (80 Stat. 926), as amended; and specific authorization statutes (43 CFR 2250).
 - National Wild and Scenic Rivers System exchanges, Section 6(d) of the Act of October 2, 1968 (82 Stat. 906; 16 U.S.C. 1277), as amended; and specific authorization statutes (43 CFR 2273).
 - National Trails System exchanges, Section 7 of the Act of October 2, 1968 (82 Stat. 919), as amended; and specific authorization statutes (43 CFR 2273).

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- Indian Reservation exchanges, miscellaneous section of the Act of April 21, 1904 (33 Stat. 211; 43 U.S.C. 144), as amended; and specific authorization statutes (43 CFR 2271).
- Reclamation exchanges, general authorization statutes (43 CFR 2272).
- National Park System non-Federal property exchanges, specific authorization statutes. Exchanges not provided for by specific statutory authority are authorized by the Act of July 15, 1968 (82 Stat. 356; 16 U.S.C. 460L-22 and 43 CFR 2240).
- Alaska Native Claims Settlement Act exchanges, Section 22 of the Act of December 18, 1971 (85 Stat. 688; 43 U.S.C. 1621(f)), as amended by the Act of January 2, 1976 (89 Stat. 1145; 43 U.S.C. 1621(f)). *
- Alaska National Interest Lands Conservation Act exchanges, Section 1302(h) of the Act of December 2, 1980 (94 Stat. 2475; 16 U.S.C. 3192(h)). *
- Alluvial Valley floor fee coal exchanges, Section 510(b) (5) of the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 481 and 43 CFR 3436.2).

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Information & Consent
Considerations When
a Qualified Exchange
Proponent Selects
Federal Coal in a Split
Estate Tract for
Exchange

5. Specific Area Exchanges. Exchanges are also authorized under the following statutes and regulations.

- King Range National Conservation Area exchanges - Section 5 of the Act of October 21, 1970 (84 Stat. 1067; 16 U.S.C. 460y and 43 CFR 2274).
- Anza Borrego Desert State Park exchanges, Section 1 of the Act of June 29, 1936 (49 Stat. 2026). (Not codified.)
- California Desert Protection Act, (Sections 702, 707 of Public Law 103-433, 16 U.S.C. 410aaa-72, 16 U.S.C. 410aaa-77).
- Steens Mountain Cooperative Management and Protection Act of 2000, (Sec. 114., and Title VI of Public Law 106-399, 43 USC 460nnn-24, 460nnn-101)

* The BLM's exchange regulations in 43 CFR 2200.0-7 (c) provide that land exchanges made under the authority of ANCSA or ANILCA shall not be limited by the Bureau's 2200 regulations. To the extent, the procedures or requirements of this handbook are inconsistent with the two statutory authorities the statutory requirements will prevail.

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6. Other Special Authorities. In addition to the above, special legislation is sometimes enacted to provide supplemental exchange authority that may prescribe certain aspects of the exchange process, allow for transactions not authorized under FLPMA (e.g., inter-state exchange), or simply direct that an exchange transaction(s) be completed. Typically there are no codified regulations covering transactions that are legislated in this manner. An example of such legislation is the Southern Nevada Public Land Management Act (PL 105-248). Any such transactions should be handled in a manner consistent with the specific legislation and, where guidance is not specified, in conformance with nationally recognized appraisal standards and the regulations in 43 CFR 2200 and 2201 to the extent they apply. See Chapter 12 for further guidance on legislative land exchanges.

Section 3 of the Oregon Public Lands Transfer and Protection Act of 1998, Public Law 105-321, established a “no net loss” policy for lands administered by BLM in western Oregon. The Act requires that when selling, purchasing, and exchanging land, the BLM may neither: (1) reduce the total acres of Oregon and California (O&C) Railroad grant land and Coos Bay Wagon Road (CBWR) lands nor (2) reduce the number of acres of O&C, CBWR, and public domain lands that are available for timber harvest below what existed on the date of enactment. The Act requires BLM to ensure “no net loss” of acres on a ten year basis.

C. Types of Exchange Transactions and Interests to be Conveyed

A wide variety of land exchange scenarios are possible, making it difficult to characterize every possible type of land exchange. Basic distinctions such as the type of interest being conveyed, the method of transacting the exchange, and the types of entities involved, are made throughout the Handbook. Regardless of the type of land exchange, the legal and regulatory requirements apply.

1. Types of Exchange Transactions

- a. Two Party (Traditional) Land Exchanges - This type of exchange transaction involves a single landowner, where the agency exchanges a parcel of federal land (or interest in land) and acquires a parcel of non-federal land (or interest in land) in a single exchange transaction, at either equal value or with an equalization payment.
- b. Assembled Land Exchange - An assembled exchange is defined in 43 CFR Part 2201.1-1 as “...the consolidation of multiple parcels of Federal and/or non-Federal land for purposes of one or more exchange transactions over a period of time.” Assembled land exchanges can range from those that involve multiple parcels under the same ownership to complex multi-ownership, multi-transaction exchanges with facilitators. Refer to Chapter 11 for further definition.
 - (1) Single Phase Assembled Transactions. Assembled exchanges completed as a single phase, with one closing and values equalized under the provisions of 43 CFR 2201.6.
 - (2) Multi Phase Assembled Transactions. Assembled land exchanges conducted over a

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period of time in a series of phased closings, each phase not necessarily of equal value but adding up to an equal value exchange in the final closing. In phased assembled land exchanges a ledger is established to serve as the accounting mechanism that tracks the imbalance of land value conveyed in each phase.

- c. **Legislative Land Exchanges** - Legislated exchanges vary widely as to the degree that Congress has specified what will be exchanged, whether NEPA analysis will be conducted, whether appraisals will be undertaken, etc. and must therefore be approached individually. However, some common requirements of land conveyances not typically addressed in legislation, such as hazardous materials assessments, title standards, and certificates of inspection and possession, may still need to be addressed. Refer to Chapter 12 for additional information.
- d. **Exchanges Involving State Governments** - State exchanges are authorized under the same authority as private exchanges and are generally handled in the same manner. However, a number of States have agreements or memoranda of understanding with BLM State Offices that establish goals, objectives, or procedures for land exchanges with BLM. Chapter 13 addresses components of state exchange processing which may vary somewhat from private exchanges, such as title evidence, public interest determination and the use of ledgers.
- e. **Exchanges Involving Other Federal Agencies** - Land exchanges may be considered where the federal land is under the jurisdiction of the BLM and the non-federal land would be acquired to benefit another Federal agency such as the National Park Service, the U.S. Forest Service or the U.S. Fish and Wildlife Service. In some cases, these exchanges may also involve the acquisition of some land to be managed by the BLM in addition to the lands being acquired to benefit the other agency. Refer to Chapter 14 for additional information.
- f. **Land Exchanges Combined with other Acquisition Authorities** - Exchanges can be used in conjunction with other acquisition authorities in acquiring a single parcel or ownership, but these other authorities may have different processing requirements and standards based on the authority being utilized. Refer to the Acquisition Handbook (H-2100) for additional information on processing an acquisition in concert with a land exchange.

2. Types of Interest to be Conveyed

- a. **Land for Land** - These are historically the most common land exchange conveyances. This type of exchange involves the BLM disposing of land and in turn receiving land from the non-federal entity. Such exchanges represent mutually beneficial adjustments to land ownership patterns for more efficient land use and management. They may be small-scale proposals to resolve boundary management issues or eliminate an in-holding, or large scale transactions such as those conducted in checkerboard land ownership areas to rearrange ownership patterns.
- b. **Land for Interest in Land, or Interest for Interest** - Examples of these exchanges would include disposing of federal land for interests in land such as access, minerals, water rights, or

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conservation easements to benefit public land management. Other examples include exchanging mineral interests to consolidate holdings and improve opportunities for mineral exploration and development.

D. Regulatory Requirements for Land Exchanges

Regulations applicable to processing land exchange proposals are contained in 43 CFR Subpart 2200. The regulations contain a complex set of minimum requirements related to processing land exchange proposals and rendering decisions on such proposals, including time frames, public notice and participation requirements, decision factors, documentation standards, protest and appeal processes, and conveyance requirements. This Handbook contains specific instructions for processing land exchange proposals to help ensure that all regulatory standards are adhered to as a part of considering land exchange proposals.

E. Other Requirements and Guidelines

There are a number of additional requirements and guidelines that must be considered in association with those identified in this Handbook. Where appropriate, this Handbook provides references to these applicable requirements and guidance. You may find it beneficial to obtain copies of the documents listed below to serve as reference material specific to the additional requirements and guidelines.

- Department of Justice, Procedural Guide for the Acquisition of Real Property by Governmental Agencies, 1972
- Standards for the Preparation of Title Evidence in Land Acquisitions by the United States, 2001.
- Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) as amended.
- Uniform Appraisal Standard for Federal Land Acquisitions (UASFLA), 2000
- Uniform Standards of Professional Appraisal Practice (USPAP), current edition
- DOI Appraisal Services Directorate processes and procedures.
- The BLM Acquisition Handbook H-2100-1.
- The BLM conveyance handbooks, consisting of Conveyance Documents, H-1860-1 (Rel. 1-1454) and Patent Preparation and Issuance, H-1862-1 (Rel. 1-1492).
- The BLM Pre-Acquisition Environmental Site Assessment Handbook (H-2101-4) and the Environmental Site Assessment Handbook for the Disposal of Real Property. 40 CFR 373, Conveyance of Federally Owned Property. BLM Manual 1203 and Departmental Manual 602

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relating to the delegation of authority for hazardous material clearances and entering into clean-up agreements.

F. Responsibility/Delegation of Authority

1. DOI, Appraisal Services Directorate (ASD). Has responsibility for oversight and management of the appraisal process and such responsibilities cannot be abdicated to any non-ASD entity. ASD responsibilities includes validation of the appraisal request, selection and engagement of the appraiser, provision of scope of work and appraisal instructions, as well as the preparation, review and approval of all appraisals for transaction involving land or interest in land. The BLM continues to have responsibility for valuation of resource commodities (e.g., timber, mineral materials, etc.) not included in land transactions.
2. Director. Has responsibility for the overall Land Resources Management (MLR) Program. The Deputy Director has responsibility for review and concurrence for land exchanges.
3. Assistant Director, Minerals, Realty and Resource Protection. The Assistant Director (AD-300) and Lands and Realty Division (WO-350) are responsible for monitoring and evaluating the exchange program and preparing instructional guidelines for field use in conducting the program. The National Land Exchange Evaluation and Assistance Team provides land exchange oversight and assistance.
4. State Directors. Within their areas of jurisdiction, are responsible ensuring the integrity of the land exchange program and for providing management oversight and compliance with the provisions of this Handbook.

State Directors have authority to approve all land exchange actions, except approval of appraisal reports¹ and title opinions of the Field or Regional Solicitor. This authority is also typically re-delegated based on the state supplement to the 1203 (Delegation of Authority) Manual. The following actions cannot be re-delegated below the State Director level:

- approval of feasibility reports
- Agreements to Initiate that provide for compensation of costs assumed²
- agreements on value based on bargaining or arbitration
- ledger management for an assembled exchange, including decisions to secure or not secure the imbalance of value owed the United States on a ledger
- approval of certain hazardous material related agreements (BLM Manual 1203)
- binding exchange agreements

¹ The appropriate BLM authorized officer must document the acceptance of the approved appraisals (with their concluded values) for agency use. See Chapter 7 for additional information.

² This approval can be accomplished as part of the State Director's approval of the feasibility report. Otherwise, the State Director must sign an Agreement to Initiate or an amendment to it that allows for compensation.

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5. Field Office Managers. Within their areas of jurisdiction, are responsible for processing land exchange proposals in compliance with the provisions of law, regulations, policy and the provisions of this Handbook.

G. Policy Guidance ← IM 2012-034 Matrix Tool

1. General.

- a. Land exchanges are an important land tenure management tool to consolidate land ownership for more efficient management. However, BLM will ensure a balanced use of a variety of land disposal and acquisition tools to enhance multiple use values and management of the public lands, improve public access, protect significant resource values, and meet State, local government and local community needs. The BLM will evaluate and consider the full range of land disposal and acquisition tools available to accomplish these objectives prior to proceeding with a land exchange proposal. The other land disposal and acquisition tools considered by the BLM Field Manager must be addressed in the Feasibility Analysis (Chapter 2). Land exchanges, however, are generally the preferred method for making land ownership adjustments with State governments. In addition, BLM will place a priority on the completion of legislatively mandated land disposal and transfer transactions.
- b. Land exchanges will be structured, where possible, to avoid the inclusion of federal lands with significant potential market value, where values can be better determined through competitive disposal methods. Significant potential market value is not defined by any specific dollar threshold; but considers such factors as adjacent land being developed for commercial or residential purposes, multiple expressions of interest in the Federal land, or volatile escalating market values. The authorized officer is required to consider the disposal of such parcels of federal land under the sale authority of Section 203 of FLPMA (43 U.S.C. 1713; 90 Stat 2750). The proceeds from sales or land exchange equalization payments that qualify under the authority of Title II of Public Law 106-248 (43 U.S.C. 2301), known as the “Federal Land Transaction Facilitation Act of 2000”, will be deposited into the Federal Land Disposal Account for the acquisition of non-federal land under the Act.
- c. The authorized officer should consider land exchange proposals that meet needs identified in land use planning documents, reject proposals inconsistent with plans and the public interest, and ensure that proposals by third parties reflect the needs and priorities of the BLM. In meeting land use plan goals, consideration must be given to all relevant interests in land, including minerals, timber, water rights, etc. and in forming more logical and efficient land and resource management areas for both the Federal government and non-Federal owners.
- d. Disposal of public land by exchange shall be considered as serving the public interest within the policy context of Section 102(a) (1) of FLPMA. BLM will provide clear documentation of the public interest determination required under Section 206(a) of FLPMA for all land exchange decisions and must give the broadest possible consideration of public needs when evaluating exchange proposals. See Chapter 9 for detailed information on making public interest determinations.

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- e. Lands or interests in land that were previously acquired with Land and Water Conservation Fund (LWCF) appropriated funds will remain in federal ownership and not be included in proposed land exchanges.
- f. The BLM will process mutually benefiting, public interest land exchanges in a timely and efficient manner through proper scoping, planning, and through streamlining land exchange processes.
- g. The BLM will ensure effective public participation in the processes for considering land exchange proposals from Tribes, State and local governments, third party interests and individual private landowners. The BLM must observe Native American consultation requirements (See BLM Handbook H-8160-1).

2. Outstanding Interests and Use Restrictions or Covenants.

- a. Non-federal land or interest in land should be acquired without reservations or outstanding rights unless it is clearly determined and documented to be in the public interest to do otherwise. All title encumbrances must be removed or determined to be administratively acceptable. Refer to Chapter 15 for Title and Conveyance information. Careful analysis is critical when contemplating the acquisition of land with outstanding mineral interests and/or rights, particularly when such lands are being considered for acquisition for their surface resource attributes. Such documentation must be made as part of the feasibility report, environmental analysis, and market value determinations when considering the exchange proposal. If a third party mineral ownership exist BLM should direct the non-Federal exchange parties to consolidate ownership. If this is not feasible, document the reasons and provide additional information on development potential, risk and likely effects on manageability. Unless the United States already hold title to a reserved mineral estate, it is advisable to require a mineral report on the non-Federal lands whenever some or all of the mineral estate would not be acquired
- b. Federal land or interest in land should be conveyed with a minimum of encumbrances. All encumbrances authorized as rights-of-way, leases, permits, and/or easements affecting Federal land that are a part of an exchange proposal must be reviewed to determine the validity and continued need for the authorization. Pay special attention to those authorizations where no facilities have been constructed. Such authorizations could cause a reduction in market value, but result in a windfall to the non-Federal party if the holder subsequently relinquishes them. The BLM should terminate or modify as appropriate, those authorizations which are no longer needed to serve the purposes for which they were established. If there is a continuing need for any encumbrance, the BLM should either convey the administration and ownership of the encumbrance to the acquiring party or retain Federal ownership and administration of the authorization. The BLM may either convey lands out of Federal ownership subject to a right-of-way or reserve to the U.S. the interest in the right-of-way. Conveyance subject to a right-of-way will transfer the administration of the right-of-way authorization to the new property owner, including the collection of rental

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- income. See the regulations at 43 CFR 2807.15 and 2886.15 for guidance on conveying lands subject to rights-of-way. Conveyance with a reservation to the U.S. provides for retention of Federal control over the right-of-way for Federal purposes, including the right to enforce the terms and conditions of the right-of-way, renew and extend the authorization, and to collect rental income. See BLM Manual 2801- Right-of-Way Management at 2801.62 for guidance on the acquiring party conveying an easement to the right-of-way holder and allowing BLM to extinguish the existing authorization. See BLM Manual 2101-5 for guidance on conveyance of property with contamination and/or remediation issues.
- c. When an exchange involves the cancellation of a grazing permit or lease, the compensation for range improvements and two-year notification requirements of Section 402(g) of the FLPMA and 43 CFR 4110 must be met.
 - d. Patent and deed use restrictions, covenants, and reservations should be kept to the absolute minimum and used only where needed to protect the public interest. Where needed, the effect of such encumbrances on market value and their future administrative costs are to be considered as a part of evaluating the exchange proposal. Where there is a need to reserve such ownership as a Federal interest in land, the reservation should be for as short a time period as reasonable.
3. Exchanges Involving the Acquisition of Facilities or Land for Facilities. Land exchanges may be utilized to acquire land for future recreation site development or other resource program facilities or purposes, such as campgrounds, boat ramps, visitor centers, or wild horse and burro, fisheries, wildlife, and range management facilities. Land exchanges may also involve the acquisition of buildings or structures where it is not feasible or desirable to separate the buildings from the remainder of the exchange, provided the primary purpose of the exchange is to acquire lands with significant resource values or to enhance land ownership patterns. In determining the feasibility of all land exchanges, the BLM must consider the cost of maintaining improvements, assess the condition of the asset and identify hazards or liabilities. A business analysis is required prior to the acquisition of any constructed asset. See BLM Real Property Management Manual (1530) and consult with your State Office Engineering and Property Management staff for assistance in completing the assessment.

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Land exchanges are not the appropriate mechanism for the acquisition of administrative facilities or sites for future administrative facilities, and exchanges may not be undertaken for these purposes. To acquire administrative facilities or sites, the preferred method is the BLM lease approval process; if this is not a viable option, the alternative is construction. The BLM Manual and Handbook 1535 (Space Management) address the acquisition of administrative sites and the lease approval process. An exception to this policy may be made only when the federal lands proposed for exchange currently include administrative facilities that cannot be improved to meet existing needs, and the primary purpose of the disposal of these lands is to acquire other improved facilities.

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4. Minerals.

- a. The disposal and acquisition of mineral estate in exchanges should serve to maintain and improve consolidated ownership of the surface and the mineral estate of Federal land. FLPMA and the land exchange regulations do not require the reservation of Federal mineral interest in land exchange transactions. The mineral report prepared for a proposed land exchange is advisory in nature only and the authorized officer should consider the benefits of including the mineral estate value in the land exchange transaction. The appraisal report determines the contributing value of the mineral estate. Proposals that would either create split estate, including reservation of minerals in the Federal land proposed for disposal, or fail to take advantage of consolidation opportunities should be discouraged. The surface estate is subservient to the mineral estate, and unless the mineral rights attached to a property have been subordinated, mineral development will take precedence over surface uses and could cause significant conflicts.
- b. Mineral rights proposed to be conveyed or reserved in exchange proposals must be carefully considered at the early stages of feasibility analysis. The authorized officer must carefully evaluate the need for the non-Federal land being considered for acquisition, uses contemplated and potential conflicts or risks when making a determination concerning the mineral estate. This evaluation is especially important in situations where the non-Federal lands are subject to a third-party mineral interest.
- c. The BLM may only contest mining claims of record to verify the validity of such claims in those instances where an exchange proposal has been preliminarily determined to be in the public interest. It is preferable for the non-Federal party to have responsibility for resolution of mining claim issues. Where the BLM determines that the public interest would be well served by exchanging Federal land subject to existing mining claims, the conveyance will be made subject to such claims. In cases where Federal land would be conveyed subject to mining claims, there should be agreement in the ATI or an amendment that the appraisal would disregard the presence of the claims.
- d. Retention of an overriding royalty. (Reserved)

5. Valuation Analysis.

- a. Valuation Analysis describes the ongoing and continuous involvement of the DOI Appraisal Services Directorate (ASD) appraiser and review appraiser throughout the land exchange process. This dialogue begins early and is a means of addressing the potential to achieve an equal value exchange and the valuation process that would be undertaken. The objective is to ensure that the valuation process utilized will provide a product with the highest level of confidence and credibility at a reasonable cost and within established time frames. All land exchange feasibility studies must include a valuation analysis section.
- b. Discussions between BLM and the ASD appraisal staff should focus on the identification of interests to be valued, documentation needs associated with appraisal requests, alternative

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strategies for value equalization, and maintaining effective communication and coordination throughout the land exchange process. Additional information on the valuation analysis process is contained in Chapter 7 of this Handbook. (See Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)

6. Exchange Processing.

- a. BLM should appropriately³ share the costs and responsibilities for processing land exchange proposals including sharing in or recovering costs from other Federal agencies benefiting from Bureau exchanges. Land exchange processing costs may be charged to a variety of benefiting subactivities⁴, the Lands and Realty subactivity, or the LWCF Acquisition Management account. However, the LWCF Acquisition Management account (3130) may only be used for specific exchange related processing costs if the non-federal land to be acquired is within or contiguous to an approved LWCF project area. Costs, responsibilities, and timeframes assigned to processing exchange proposals will be clearly addressed in the Agreement to Initiate when processing land exchange proposals.
- b. The BLM priority is to develop land exchange proposals with an equal land value of federal and non-federal lands involved in the exchange and to avoid or minimize land exchange equalization payments. The development of exchange proposals with an assumption of automatically utilizing the 25 percent federal exchange equalization payment limit provided by law and regulations is not acceptable. LWCF funds available for land exchange equalization payments will only be used if the non-federal land acquired by exchange is within or contiguous to a project area meeting the intent of the LWCF Act and possessing an administrative, agency or Congressional designation. These LWCF funds are managed by the BLM Washington Office and will only be made available after review of a State Director request.

The relative value of federal and non-federal lands included in land exchange proposals must be kept as close as possible while providing the flexibility to allow the addition or deletion of lands as necessary to achieve an equal value transaction. In addition, the parties must ensure that proposals include only those federal or non-federal lands required to achieve the identified objectives of the exchange. Land exchange proposals should avoid the identification of a pool of lands for selective use in a specific exchange proposal after environmental reviews and clearances are completed. If it is necessary to identify additional lands, those additional lands may not exceed the 25 percent federal exchange equalization payment limit. The goal is to identify a specific land exchange proposal and not a pool of lands for either disposal or acquisition.

³ In most cases, the exchange parties will share the cost equally.

⁴ The BLM has a long-standing policy of having the resource programs that would benefit from a land exchange pay a fair share of the processing cost and responsibilities.

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- c. An analysis of the feasibility of an exchange will be completed for all land exchange proposals. The content of the feasibility report will include, at a minimum, the material outlined in this Handbook in Chapter 2 along with a draft of the Agreement to Initiate and Notice of Exchange Proposal. The feasibility report will be recommended by the Field Office Manager and approved by the State Director.
- d. All documents and studies related to the environmental analysis, appraisal and other factors considered in the evaluation of a proposal must be completed and available for public review no later than the time at which a decision is made on the exchange. Field offices are encouraged to expand the availability of information by making effective use of the internet and other communication tools. To facilitate public participation it may be appropriate to involve the public in the collection of data and development of studies necessary to consider a land exchange proposal. Feasibility reports are available to the public when the Deputy Director approves the exchange for further processing. Appraisal and appraisal review reports are available to the public only after they have been reviewed and approved by the ASD and accepted by the BLM for use in a proposed land exchange. Proprietary or confidential business information must be protected in accordance with law and regulations.
- e. Assembled land exchanges may be considered as a means of acquiring high priority non-federal land and/or promote efficiency through combining multiple parcels or ownerships into one exchange proposal. The feasibility report for assembled exchanges will address the benefits associated with the assembled process, all federal and non-federal land being considered, and the value considerations. The regulations for assembled land exchanges (43 CFR 2201.1-1) provide authority for establishing and maintaining ledger accounts to track balances in land values conveyed in assembled transactions. The practice, however, of holding cash in escrow to secure ledger imbalances is not an acceptable means of securing land value owed to the United States. Ledgers will only be used to reflect imbalances in land value and will not be utilized to track the status of funds held in escrow accounts.

7. Use of Facilitators.

- a. The use of third party facilitators may be beneficial when they can achieve or expedite identified agency acquisition objectives with their services. In making decisions to work with third party facilitators, the authorized officer must ensure that the proposal reflects the priorities identified in land use and acquisition plans, is consistent with the annual work plan, and complies with laws, regulations, policies and guidance for processing exchange proposals.
- b. Any Agreement to Initiate with a third party exchange facilitator must include the provisions for full disclosure (see Chapter 4). The facilitator must disclose the nature of all agreements and any additional fees, costs or surcharges added to the appraised land exchange property values to cover the costs of participation in the exchange. The facilitator must make an initial disclosure prior to the appraisal request to ensure appropriate consideration in the appraisal. The disclosure provision will ensure that BLM has the right to inspect the records of the facilitator to verify the nature of the agreements with the other interested parties.

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- c. Third party facilitators are not agents of BLM and participate in real estate transactions at their own risk. For further clarification, see “Guidelines for Transactions between Nonprofit Organizations and Agencies and the Department of the Interior” (Chapter 2, Illustration 2-1).

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Illustration 1-1 - Land Exchange Processing Steps

RESPONSIBLE OFFICIAL	PROCESSING STEP	REFERENCE CHAPTER	GENERAL TIME-FRAME ⁵
A. Developing Exchange Proposals			90 days ⁶
Field Manager	<u>Informal Discussions</u> Before submitting a formal proposal, potential nonfederal exchange parties should meet with BLM. This meeting provides a forum for discussing land exchange processing procedures, preliminary review of nonfederal land title and informally sharing ideas about proposed land exchanges. This informal discussion and preliminary screening can help identify proposals that have fatal flaws or are otherwise unacceptable. Preliminary screening of potential exchange opportunities may include broad scale consideration of land use plans, natural resources, land status, land values, funding capabilities, and manageability of nonfederal lands. These pre-proposal discussions should result in exchange proposals that are more complete.	Chapter 2 B&C	
Field Manager	<u>Developing land exchange proposals</u> The BLM and nonfederal exchange parties develop formal land exchange proposals through a series of meetings and correspondence.	Chapter 2 C&F	
B. Evaluating the Feasibility of Exchange Proposals			160 days
Field Manager	<u>Preparing the feasibility report</u> A feasibility analysis is required for every land exchange that advances for consideration past the preliminary evaluation stage. The report serves as a communication and coordination tool between staffs at all levels of the organization and to document the preliminary information and assess the entire land exchange processing work effort.	Chapter 2 E	
Field Manager	<u>Land Exchange Processing Cost</u> Land exchanges require a substantial multi-year commitment of both funding and staffing. The BLM and nonfederal exchange parties must complete an accurate projection of these funding and staffing commitments before beginning work on an exchange. This information represents an important part of the Feasibility Report and Agreement to Initiate.	Chapter 3	
Field Manager	<u>Agreement to Initiate an Exchange</u> The ATI documents the roles, responsibilities and timeframes for processing land exchange proposals.	Chapter 4	

5 Estimates shown are for an average 18 to 24 month land exchange processing time.

6 Actual time may vary from 60 days to several years.

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Field Manager	Establishing the serialized case file for the proposed land exchange, noting the public land records, and segregating the Federal lands.	Chapter 5	
State Office	State Office Feasibility Review requirements – State Offices must review all feasibility packages and requests Field/Regional Solicitor concurrence, Washington Office (WO-300) concurrence and Deputy Director approval to proceed.	Chapter 2 (E.11)	
Washington Office	Washington Office Feasibility Review and Approval requirements – The Washington Office (WO-300) must review all land exchange feasibility packages and respond to State Directors request for concurrence and approval to proceed. *Congressional Notification per WO IM 2008-197	Chapter 2 (E.11) WO review per IM 2010-121	
C. Exchange Processing and Documentation			130 days ⁷
Field Manager	Executing an Agreement to Initiate (ATI) an exchange.	Chapter 4	
Field Manager	Publishing and mailing out the notice of exchange proposal (NOEP), an informational notice describing the exchange proposal and providing for public comment.	Chapter 5	
Field Manager	Requesting land exchange related appraisal services.	Chapter 7	
Field Manager	Conducting detailed resource analysis and environmental documentation, including: • Mineral potential report • Cultural and historic report • Wildlife and T & E report • Botanical and T & E report • Contaminant inventory and Environmental Site Assessments⁸ • Certification of Inspection and Possession • NEPA documentation	Chapter 6	
DOI – ASD	ASD review and approval of appraisals for land exchange transactions.	Chapter 7	
State Director/ Field Manager	Acceptance of an ASD approved appraisal for Agency use.	Chapter 7	
Field Manager/State Director	BLM and the non-Federal exchange parties reach agreement on the relative values of the Federal and nonfederal lands and equalizing values.	Chapter 7	
Field Manager/ State Director	Use of arbitration, bargaining or other methods to resolve disputes over value ⁹	Chapter 8 (Reserved)	

⁷ Dependent upon field season and any critical timing associated with inventories and evaluations.

⁸ Varies by type of contaminant, location, responsibility, and whether indemnification language is included.

⁹ The BLM Deputy Director must approve use in advance.

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D. Decision Analysis and Approval			130 days
Field Manager	Content requirements for land exchange decision documents.	Chapter 9	
State Office	State Office reviews decision package and requests Field/Regional Solicitor concurrence, Washington Office (WO-300) concurrence and Deputy Director approval to proceed.	Chapter 9	
Washington Office	Washington Office Decision Review and Approval requirements – The Washington Office (WO-300) must review all land exchange decision packages and respond to State Director requests for concurrence and approval to proceed.	Chapter 9 (C)	
Field Manager	Publishing and mailing Notice of Decision (NOD) on the exchange. If a protest is filed the Field Manager will analyze the protest and forward a recommended response to the State Office. The State Office will issue a decision in response to the protest. The State Office protest response decision is appealable to IBLA in accordance with 43 CFR Part 4 and must contain an appeals paragraph.	Chapter 9	
E. TITLE TRANSFER			30 days
Field Manager	Executing a Binding Exchange Agreement - BLM must use a binding agreement when contaminants are present.	Chapter 10	
Field Manager	Sending case files to the State Office and requesting conveyance documents.	Chapter 10	
Field Manager/ State Director	Equalizing land exchange values.	Chapter 11	
State Office/ Regional Solicitor	Securing Solicitor approval of: • title evidence, • conveyance documents, • escrow and closing instructions, • binding exchange agreements, • other closing documents.	Chapter 15	
State Office	Process for closing the land exchange transactions	Chapter 16	
State Office/Field Office	Completing Field Office and State Office post-conveyance actions and land status updates.	Chapter 17	

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Illustration 1-2 – Secretarial Order No. 3259

THE SECRETARY OF THE INTERIOR
Washington

ORDER NO. 3258

SIGNATURE DATE: December 30, 2004

Subject: Policy Guidance Concerning Land Valuation and Legislative Exchanges

Sec. 1 **Purpose.** This Order provides policy for land valuation issues, real property appraisals, and legislative land exchanges.

Sec. 2 **Background.** During the past year, the Department has taken significant steps to ensure that land transactions are conducted with integrity and earn public confidence. These steps include implementing reforms to improve the management of real property appraisals, establishing the Appraisal Services Directorate, and issuing the Land Transaction Principles. This Order provides the following: (a) a policy on alternative methods of valuation (AMV) that addresses the need to comport with nationally applicable appraisal standards; (b) a policy on appraisals prepared for third (*i.e.*, non-Federal) parties; and (c) a policy on legislative exchanges that reinforces existing Departmental guidance and further provides for a Departmental determination on how to review such proposals internally to ensure appropriate coordination and decision making. The legislative exchange policy also underscores the importance of adhering to applicable appraisal standards in developing applicable legislative provisions.

Sec. 3 **Authority.** The policy in this Order is being issued in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

Sec. 4 **Policy.**

a. Alternative Methods of Valuation.

(1) All real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). Accordingly, the use of public interest value, contingent valuation, habitat equivalency analysis, and any other AMV in appraisals is expressly prohibited.

(2) If Congress directs the Department to utilize AMV other than or in addition to an appraisal in a specific transaction, the Department shall (a) expressly describe the AMV applied; (b) using the assistance of the Appraisal Services Directorate (ASD), explain how the AMV differ from appraisal methods applied under UASFLA or USPAP; and (c) upon Congressional direction, provide this material

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to the appropriate committees prior to or after completion of the transaction, in accordance with such direction.

(3) Requirement for Congressional Authorization or Notification.

(a) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that requires Congressional authorization, the Department shall expressly describe to the appropriate committees of Congress the AMV applied and, using the assistance of the ASD, explain how they differ from appraisal methods applied under UASFLA or USPAP.

(b) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that does not require Congressional authorization, the Department shall notify the appropriate committees of Congress and the Office of the Inspector General prior to the completion of the transaction and, upon Congressional direction, explain, using the assistance of the ASD, to the appropriate committees how the AMV differ from appraisal methods applied under UASFLA or USPAP.

(4) The Associate Director, ASD, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Office of the Special Trustee for American Indians (OST), as applicable, and the Office of Congressional and Legislative Affairs (OCL).

b. Appraisals Prepared for Third (i.e., non-Federal) Parties.

(1) Appraisals prepared for third (i.e., non-Federal) parties may assist in achieving mutually beneficial outcomes for the Department and the proponent. The Department of the Interior, however, is not obligated to review land transaction proposals supported by such appraisals that do not comport with its land management missions, priorities, and plans.

(2) Upon bureau request, the Department, acting through the ASD or the OST, as applicable, shall review a third party appraisal if: (a) the third party consults with ASD or OST prior to the initiation of the appraisal on the scope of work and the selection of the appraiser, and agree that ASD or OST, as applicable, is both the client for and an intended user of the appraisal; (b) a senior bureau or Departmental manager (i.e., Senior Executive Service level in the field or headquarters, as applicable) has transmitted the appraisal with a determination that the land transaction proposal supported by the appraisal comports with applicable missions, priorities, and plans; and (c) ASD or OST, as applicable, has determined that the appraisal was prepared by a certified appraiser and meets applicable appraisal standards.

(3) ASD or OST review of an appraisal does not create an expectation that such appraisal will be approved.

(4) In cases where an appraisal is reviewed by ASD or OST, a second appraisal may be required. If so, ASD or OST shall conduct or oversee that appraisal, which shall be performed in accordance with procedures determined by ASD or OST, as applicable.

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(5) The Associate Director, ASD, has overall authority and responsibility to ensure the implementation of this policy in coordination with OST, as applicable, and the OCL.

c. Legislative Exchanges.

(1) All officials and employees of the Department shall adhere to 461 DM 1, which addresses requests for information, drafting, or other assistance regarding legislation from sources outside the Department, and specifically requires coordination with the Legislative Counsel in OCL.

(2) Similar coordination with the OCL shall occur on legislative exchange proposals initiated by any entity, official, or employee of the Department.

(3) The OCL shall determine the appropriate means for the review of each legislative exchange proposal, including the involvement of appropriate policy officials of other offices (*e.g.*, the ASD or the OST as appropriate, and the Solicitor).

(4) Appropriate documentation shall support the key provisions of all legislative exchange proposals.

(5) All appraisals used in legislative exchanges shall conform to nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). When the Department proposes the application of alternative methods of valuation other than or in addition to an appraisal for a legislative exchange, it shall expressly describe the alternative methods of valuation and explain how they differ from methods utilized in an appraisal consistent with nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable).

(6) The Director, OCL, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Associate Director, ASD, as applicable.

Sec. 5 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on July 30, 2006.

/s/ Gale A. Norton

Secretary of the Interior

SO#3258 12/30/04

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Chapter 2 - Developing and Evaluating the Feasibility of Exchange Proposals

A. Land Tenure Planning

Section 205 of FLPMA requires that lands acquired through exchange must be consistent with the agency's mission and its applicable land use plans. The initial basis for considering land tenure adjustment opportunities lies within existing land use planning documents. They may take the form of resource management plans, management framework plans, or amendments to these plans. The BLM may supplement land use plans with activity-level planning that further defines goals and objectives or provides more site-specific direction on land tenure adjustments. The BLM should consider the development of activity-level plans in areas with active land tenure adjustment programs. A high level of familiarity with these documents is necessary to provide adequate feedback on the potential feasibility of exchange proposals.

The BLM does not have authority to consider land exchanges where the intent is to acquire land for re-conveyance to State or local governments, or other entities. The regulations at 43 CFR 2740.0-6 (e) specifically prohibits the BLM from acquiring land in an exchange in order to reconvey pursuant to the Recreation and Public Purposes Act.

1. Land Use Plans. Approved land use plans provide a framework for land ownership adjustments through land exchanges and serve as a screening mechanism to ensure that the BLM identifies priority acquisitions. Plans identify the public land potentially suitable for disposal by exchange and may provide criteria to help guide acquisitions of non-Federal land. Land may be identified either by parcel, by criteria, or by some combination thereof that would contribute to achieving the management objectives identified in the land use plan. In addition, a balanced use of a full range of land disposal and acquisition tools is required as part of Statewide Land Tenure Management Strategies.

Additional information on land use planning for land tenure adjustments is found in Handbook H-1600-1.

2. Land Tenure Adjustment Plans. Approved land use plans often identify a number of areas for potential disposal or acquisition and/or large areas that contain numerous parcels that could, depending on availability, represent a priority for disposal or acquisition. More detailed information can be addressed through completion of an optional Land Tenure activity-level or strategic plan to address such situations. The Acquisition Handbook (H-2101-1) provides guidance on the preparation of such plans, which the BLM would develop subsequent to the completion of a land use plan.

B. Preliminary Evaluation of Exchange Proposals

An essential part of the preliminary evaluation of land exchange proposals involves internal and external communication. There is no prescribed method or format associated with this preliminary evaluation process, but at a minimum, it should include an analysis of land use plan conformance,

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potential public benefits, land tenure adjustment alternatives, and the identification of any notable issues that could preclude favorable consideration of the proposal. The BLM completes the evaluation process at both staff and management levels.

Occasionally, persons who have not engaged in preliminary discussions with the BLM and may not be aware of land exchange objectives and requirements submit land exchange proposals. When it is determined that such a proposal is not feasible or not a priority for the agency, a written explanation should be sent to the party, and no further consideration of the land exchange proposal is necessary. Such determinations are not subject to administrative review (i.e., protest or appeal).

C. Development and Content of Formal Exchange Proposals

The regulations provide for consideration of exchange proposals generated either by the BLM or by any person, corporation or legal entity (43 CFR 2200.0-5(r)). It is not uncommon for exchange proposals to address lands under the jurisdiction of other BLM offices or other Federal agencies and, in many cases, these proposals can be considered. However, the regulations require that the Federal and the non-Federal land in an exchange be located in the same State. Refer to Chapter 14 for additional information to consider when addressing land exchanges involving other federal agencies.

Land exchange proposals are generally developed through a series of correspondence and meetings between the parties interested in an exchange. These initial meetings are an important forum for the parties to share information on expectations and constraints that need to be considered in developing land exchange proposals.

There is no formal application required for land exchange proposals. Following the initial meetings and coordination, either the non-Federal party or the BLM should formalize the exchange by preparing a written land exchange proposal. The proposal should include a full legal description of the Federal and non-Federal land and interests to be conveyed or reserved. Exchange proposals should identify which parts of the exchange process the non-Federal party is willing to fund or assume responsibility for (see Chapter 3). Processing costs should be shared between the non-Federal exchange parties and the BLM. Where an exchange proposal involves acquisition of land to benefit another Federal agency, the proposal should also identify which parts of the process that agency will fund or assume responsibility for (see Chapter 14).

The non-Federal party should provide current title evidence for the land/interest in land involved in a formal exchange proposal, if it has not been previously provided. The title evidence should show all reservations, restrictions, and encumbrances on the non-Federal land and include legible copies of all recorded reservation or encumbrance documents.

Adjudication is an on-going process that occurs throughout the life of the exchange. Once the land exchange proposal is formalized BLM should take the following initial steps as part of the adjudication process:

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Federal Lands

- Check the survey status, legal description and acreage. Consult with Cadastral Survey concerning survey needs, legal description review and other related assistance. New surveys are generally not required, but parcels must have adequate monumentation to allow accurate location on the ground and assessment of resources. (See ~~BLM Acquisition Handbook H-2100-1, Chapter V, Illustration 1~~ for an example of a form to use in requesting assistance.) **600 DM 5** See IM 2011-122, IM 2012-060, & IM 2012-095 - **Land Surveyor Report**
- Prepare a working map of the Federal lands.
- Check the land status to ensure availability for exchange; identify withdrawals, classifications, segregations, other encumbrances and use authorizations such as federally granted rights-of-way, grazing leases or permits.
- Check mining claim reports to determine if there are active mining claims. Identify all active mining claims, verifying current ownership and currency of annual assessment filings.
- Check records for active minerals leases or mineral material sales and permits.

Non-Federal Lands

- Check the legal description in the preliminary title commitment (or other title evidence) to ensure that the description is acceptable for acquisition by the United States; metes and bounds descriptions should close; consult with Cadastral Survey on private surveys to ensure acceptability to the U.S.
- Identify any fatal defects or exceptions contained on the preliminary title commitment. Refer to Chapter 15 for further information on exceptions to Title.
- Prepare a working map of the non-Federal lands the U.S. would acquire.
- Review the conveyance document that transferred the lands out of federal ownership, identifying any reservations (such as mineral reservations to the U.S.) or third party interests addressed in the conveyance.

D. The Purpose and Requirement for Feasibility Reports

Once a formal land exchange proposal is developed, the BLM completes a feasibility report. Feasibility reports are required for every land exchange proposal that advances for further consideration past the preliminary evaluation phase. The feasibility report evaluates public benefit and land use plan conformance, addresses alternative land disposal and acquisition options, assigns cost and processing responsibilities, and identifies a schedule for completion of the proposed land exchange. The feasibility report helps ensure that proposals with fatal flaws are screened out early in the process.

The feasibility report is not intended to replace the resource evaluation and NEPA process, but to document the analysis of the preliminary information and assess the entire work effort associated with the proposed land exchange process.

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Processing of a land exchange should not be initiated until the Deputy Director (WO-100) approves the land exchange for further processing.

E. Preparation and Content of the Feasibility Report

The BLM is responsible for the completion of the feasibility report. The content of feasibility reports illustrates the significant effort needed to effectively evaluate and analyze all aspects of the land exchange process at this preliminary stage. Occasionally, necessary information is not available at the time the feasibility report is prepared. In those circumstances, the report should explain how this information would be collected and analyzed. The Report must also identify or predict potential issues and concerns related to this information. Review the information presented in Chapters 4 and 5 on the Agreement to Initiate (ATI) and Notice of Exchange Proposal (NOEP) in conjunction with preparing the feasibility report. The following guidance represents the minimum content requirements for the feasibility report. For assembled land exchanges, see Chapter 11 for additional information that needs to be included in the feasibility report.

1. Background. Identify the parties involved and when the proposed land exchange was initiated.
2. Land Exchange Proposal.
 - a. Narrative Description: Provide a narrative description of the non-Federal and Federal land/interest being considered in the proposed land exchange. Include an explanation of the major resources or programs that would benefit from the exchange. Describe why the land exchange is a priority and potentially in the public interest. Include a thorough discussion of the consideration given to other land disposal and acquisition tools as an alternative to the land exchange proposal.
 - b. Legal Descriptions (generally attached as an exhibit): Establishing accurate legal descriptions in the feasibility report will assist in ensuring that all subsequent reports and notices utilize a common and correct legal description of the property and acres involved in the transaction. Consult with Cadastral Survey concerning legal description standards.
 - (1) Federal Land: Describe the land using the Public Land Survey System. Identify survey needs, if any, to resolve resource issues, land use conflicts or other issues.
 - (2) Non-Federal Land: Provide the legal description as contemplated for use in the conveyance document to the United States, whether utilizing the Public Land Survey System or a metes and bounds description. Review survey needs and non-standard descriptions (metes and bounds) for acceptability with your State Office Cadastral Survey Group.
 - c. Preliminary Title Evidence and Identification of Outstanding Third Party Interests (generally attached as an exhibit): Identify any water rights, access, mineral or other appurtenant rights or interests that will be included in, excluded from, or reserved from the exchange. Keep patent and deed use restrictions, covenants, and reservations to the absolute minimum and use only where needed to protect the public interest as supported by the NEPA analysis. Where needed,

600 DM 5
See IM 2011-122,
IM 2012-060 & IM
2012-095 - Land
Surveyor Report

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the effect of such encumbrances on market value and their future administrative costs are to be considered as a part of evaluating the exchange proposal. Where there is a need to reserve such ownership as a Federal interest in land, the reservation should be for as short a time period as reasonable.

- (1) Federal Land: List and identify from the Master Title Plat, LR2000, Historical Index, and mining claim records, all outstanding interests in the Federal land. Ascertain if there are grazing permits/leases or any other authorizations (such as Special Recreation Use Permits) that encumber the land. When an exchange involves the cancellation of a grazing permit or lease, the compensation for range improvements and two-year notification requirements of Section 402(g) of the FLPMA and 43 CFR 4110 must be met. Classifications, withdrawals and other segregations must also be identified and the feasibility report should discuss the regulatory or processing requirements that may be necessary to deal with these issues.

Federal land or interest in land should be conveyed with a minimum of encumbrances. All encumbrances authorized as rights-of-way, leases, permits, and/or easements affecting Federal land that are a part of an exchange proposal will be reviewed to determine the validity and continued need for the authorization. The authorizations will be terminated or modified as appropriate, if no longer needed to serve the purpose for which they were established. If there is a continuing need for any encumbrance, the administration and ownership of the encumbrance should be conveyed to the acquiring party unless there is a need for continued Federal ownership and administration of the authorization. See the regulations at 43 CFR 2807.15 and 2886.15 for guidance on conveying lands subject to rights-of-way. See BLM Manual 2801- Right-of-Way Management at 2801.62 for guidance on the acquiring party conveying an easement and allowing BLM to extinguish the existing authorization. See BLM Manual 2101-5 for guidance on conveyance of property with contamination and/or remediation issues.

Identify how the property would be conveyed, i.e., one patent to an individual or partnership.

- (2) Non-Federal Land: List all outstanding interests in the property from the title evidence. Title companies do not commonly insure water rights, mineral rights or other similar interest in land. It may be necessary for the non-Federal parties to provide supplemental information concerning severed interest. See Chapter 15 for detailed information on title evidence. A formal Solicitor's title opinion is not required at this stage, but the BLM should determine that the non-Federal party has or will be able to acquire title to the non-Federal land, and that this title would be acceptable to the Federal government. This preliminary title review can often be completed at the Field Office level. Request Solicitor input when title encumbrances are unclear or may appear to conflict with public land management.

Non-Federal land or interest in land should be acquired without reservations or outstanding rights unless it is clearly determined and documented to be in the public interest to do otherwise. Careful analysis is critical when contemplating the acquisition of land with outstanding mineral interests and/or rights, particularly when such lands are being

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considered for surface resources. Such documentation must be made as part of the feasibility report.

Identify those entities that have an ownership or third party interests in the Federal and non-Federal land. The BLM must provide notice to these entities during formal comment periods. Also, identify if a non-Federal exchange party or tenant occupies the property, and if requirements under the Relocation Act would be applicable (refer to the Acquisition Handbook for additional details on relocation entitlements and requirements).

Verify that the non-Federal party either owns or has sufficient control to offer the property for exchange and identify who will be the primary contact in processing the transaction.

Identify the expected form of conveyance, e.g., General Warranty Deed executed by a married couple, as tenants in common, etc.

d. Maps: Attach maps of suitable scale to help in evaluating the proposal.

3. Consistency with Land Use Plans and Legislative Designations. Identify the existing land use plan (RMP or MFP) decisions that support consideration of the disposal of the Federal land by exchange and identify how the acquisition of the non-Federal land is consistent with the land use plan. If a land use plan amendment is needed to complete the exchange and/or related actions, identify how the amendment and exchange processes will be coordinated. Discuss whether exchanges are addressed in any existing activity plans, such as ecosystem management plans, wild and scenic river management plans, area of critical environmental concern (ACEC) plans, allotment management plans, habitat management plans, or coordinated resource management plans.

Identify any State or local government land use plans that need to be addressed for consistency. Identify legislative designations (Wilderness, Wild and Scenic River, National Conservation Area, etc.) that would affect exchange processing, management of acquired lands, or the need for related management actions.

4. Anticipated Land Use.

- a. Federal Land: Summarize the non-Federal party's intended future use of the Federal land. For some properties, it may be necessary to obtain development plan information or local zoning information for NEPA compliance and valuation of the property. Refer to Chapter 7 section on valuation analysis for additional information.
- b. Non-Federal Land: Summarize the management designations and prescriptions that would be applicable to the non-Federal land, if acquired, and consider whether withdrawal, special designation or other management controls such as public closures may automatically become effective or may be necessary to protect resource values proposed for acquisition in the

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exchange. Since lands will automatically be open to entry 90 days following their acquisition¹⁰ (see 43 CFR 2201.9(b)), withdrawal needs (43 CFR 2201.9(b)) must be addressed in the feasibility report so that the NEPA analysis can address future management that would be required for the acquired land. See Chapter 6 for additional information on resource analysis and environmental document requirements.

If the non-federal property contains infrastructure such as roads, bridges, buildings, wells, or dams and reservoirs this section must address what actions have been or will be taken to assess their condition and future management costs. Pay special attention to assessing the condition of buildings contemplated for use subsequent to acquisition. Staff with expertise in the engineering and hazardous materials fields must be involved in assessing the suitability of these structures for acquisition. You may also use the Compliance Assessment – Safety, Health, and Environment (CASHE) process or other condition assessment method administered by the BLM State Engineer for identification of future management risk and cost. See the BLM 1530 Real Property Management Manual for guidance on completing a business analysis for constructed assets.

Identify if access is available to the non-federal property or if additional acquisition or road construction will be necessary to provide for administrative or public use of the property.

5. Preliminary Review of Resources. Summarize the existing resource information for the non-Federal land and Federal land and indicate how the resources being gained compare to those that would be lost.

Summarize the additional data collection needs necessary to complete the evaluation of resources gained vs. lost and to comply with other laws. Identify any special or critical information that needs to be addressed as the sequencing schedule is developed for collecting and analyzing additional data. Summarize consultation and coordination requirements with other Federal and State agencies or issues related to endangered species, cultural resources, and consultation with Native American governments.

6. Valuation Analysis. The purpose of the Valuation analysis section of the feasibility report is to document the communication and coordination that has occurred with the ASD to consider both the exchange proposal and the appraisal/appraisal review process. This section of the feasibility report is generally written by BLM with input from the appraisal staff of the ASD. During valuation analysis, Field Office Managers should focus on the value implications of considering various exchange alternatives, including:

- various land configuration and timing scenarios,
- the number of appraisals or reviews to be procured,
- additional technical studies needed to improve the quality and reliability of the appraisal report,

 ¹⁰ Lands acquired by exchange that are within Congressionally designated areas, withdrawals, or areas having an administrative designation established through the BLM land use planning process automatically become part of the area or unit within which they are located and thereafter are managed in accord with all laws, regulations or plans applicable to such area or unit. See 43 CFR 2200.0-6 (f - g).

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- the interest in land (including mineral interest) proposed for exchange and
- an estimate of cost and time frames for the process.

Summarize the outcome of the valuation analysis process as it relates to the potential for the transaction to be of equal value following completion of the appraisals. Also, summarize any unique, complex or controversial aspects of the valuation process and how those issues will be handled.

Identify the strategy for equalizing the exchange by adjusting the properties included in the proposal and how the strategy will be incorporated in the appraisal and environmental documentation processes. Identify if equalization funding is potentially available, and how and when such funding may be used in equalizing the land exchange. Also, identify the process the land exchange parties will use to resolve value disputes. Where you anticipate completing a land exchange in several linked transactions or phases, the valuation analysis section of the feasibility report must address the appraisal process that will be applied to these transactions. (See Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)

7. Funding and Staffing Availability. Summarize the funding and staffing commitments necessary to process the exchange and assess whether the objectives of the exchange warrant the commitment of staff and funding. The summary should also address other benefiting agencies (see Chapter 14) and the commitment of non-Federal parties to contributing an appropriate share of the costs and responsibilities for exchange processing.

When multiple BLM offices will be involved in processing a land exchange proposal, additional coordination is needed on assignment of responsibilities and costs, and in determining which office will have the lead in compiling information and reports generated from multiple offices. These assignments and lead office designations should be documented in the feasibility report, where the State Director will establish the authorized officer for purposes of completing the exchange.

A draft Agreement to Initiate (ATI) for the exchange should be attached to the feasibility report. (See Chapter 4 for additional information on the content and preparation of the ATI.) Drafting the ATI will require the preparation of a detailed cost analysis and time schedule for processing the land exchange. See Chapter 3 for more information on estimated land exchange processing costs. The information from the draft ATI only needs to be summarized in this section to the extent necessary to communicate unique or special circumstances that need to be brought to the reviewers' and decision-maker's attention. Such special circumstances would include proposals to compensate for assumed processing costs or involve processes to be used if there are disagreements on value, both of which require State Director approval. Refer to Chapter 3 for additional information that needs to be included and the delegation of authority for approving an ATI with a cost compensation provision.

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8. Funding Sources. Summarize the funding sources from benefiting sub-activities that will fund the exchange processing costs. Encourage multiple sources of funding for exchange processing as proposals generally benefit numerous resource management programs. Land and Water Conservation Fund (LWCF) Acquisition Management (3130) funding may be considered where the exchange benefits an approved LWCF project area, however LWCF funds (3110) may not be used for land exchange processing costs.

The information in this section should be addressed at the level of detail necessary to secure and commit to processing and funding commitments.

9. Estimated Time Frames for Completing the Exchange. The processing schedule developed in the draft ATI should be summarized in the feasibility report. Pay particular attention to those aspects of the schedule where support is needed from other offices, Federal agencies, or contractors. Give emphasis to revocation of withdrawals, plan amendments or other processing items that are often especially time consuming.
10. Issues and Conflicts. Identify possible conflicts, problems and areas of potential sensitivity. Include anticipated public support or opposition and local government positions on the exchange. Highlight completed public outreach efforts. Briefly describe planned outreach efforts designed to involve constituents such as open houses, public meetings or coordination with Resource Advisory Councils. For large, controversial or sensitive exchanges or where significant media attention has already been focused, it may be appropriate to develop a detailed communication plan which would establish proposed dates of news releases in conjunction with key exchange processing dates. In these instances, advance planning to clarify communication objectives and provide a framework for getting our message out would be helpful. Identify other governmental entities, interest groups, and individuals that should be notified during the public comment period.

Recognizing that the feasibility report is a communication tool that will be reviewed by the State Office and the Washington Office; include any other information that may be necessary to further explain the proposal or processing schedule. States Offices may also require additional information depending on the issues germane to the State.

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- IM 2010-121
11. Review, Approval and Quality Assurance Requirements. To strengthen management oversight and ensure adequate controls are in place for management decisions involving land exchanges a national level review process is required for all land exchange proposals. Under this review process, the National Land Exchange Evaluation and Assistance Team (NLET) reviews land exchange feasibility packages at the feasibility stage. Upon completion of the NLET review, the feasibility package is forwarded through the Washington Office Lands and Realty Division (WO-350) and the Assistant Director Minerals, Realty and Resource Protection (WO-300) for further review before appropriate action is taken by the Deputy Director. The review and concurrence process may result in revisions to the feasibility package. This practice will continue until the Director authorizes individual State Directors to resume selective responsibility for land exchange management oversight and quality control. The Feasibility Report is available to the public when the Deputy Director approves the land exchange for further processing.

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To expedite the review and approval process a format (see Illustration 2-3) has been developed for providing a summary of the feasibility review information. State Offices should develop this summary information prior to forwarding the package to the NLET for review.

- a. **Field Office Responsibilities:** Field Offices must prepare a feasibility report for every land exchange recommended for processing. A draft ATI and NOEP (Chapter 4 and 5) is required as part of the preparation of the feasibility report. Field Offices have primary responsibility for preparing the feasibility report in a manner and to the degree necessary to ensure strict compliance with laws, regulations and policy. Prepare and attach an issue paper (See Illustration 2-4) for the exchange that can be updated as the process evolves to improve communication about the transaction. Field Offices will also prepare the initial feasibility review package and summary document. A basic review package consists of the following:

- Approval Request Memo
- Issue Paper
- Feasibility Summary (Illustration 2-3)
- Feasibility Analysis/Report
- Appraisal/Valuation Information
- Documentation of Review by Regional Solicitor
- Draft ATI
- Draft NOEP
- Maps
- Additional supporting information as needed.

Field Office Managers are encouraged to seek additional assistance and expertise from the NLET for processing sensitive or controversial proposals and/or proposals with unusually high values.

- b. **State Office Responsibilities:** State Directors are responsible for ensuring the integrity of the land exchange program and providing management oversight and control within their geographic jurisdiction. State Directors must approve all feasibility reports and are not authorized to delegate approval authority to a lower level. Approval from the State Director is required for proposals involving compensation of costs (see Chapter 3), establishing a ledger for an assembled exchange (see Chapter 11), or reaching an agreement on value based on bargaining (see Chapter 8). State Directors are also responsible for signing a Binding Exchange Agreement to lock in values, or when hazardous materials are present (see Chapter 10). As a part of the approval process, State Offices have quality assurance responsibilities for land exchange processing, including coordination with the Solicitor's office on feasibility review and concurrence.

Before recommending a land exchange for further consideration or approval, State Directors must ensure the public interest will be served and that all statutory, regulatory, policy, and other requirements are met. State Offices must review land exchange proposals and obtain Field/Regional Solicitor review and concurrence. If the reviewers identify any errors,

Solicitor review required per WO IM 2007-181

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inconsistencies, flaws or other weaknesses the State Office must suspend further processing of the land exchange until the necessary corrective action(s) is taken. When the State Office complete its review they submit the feasibility package (feasibility report, draft ATI, draft NOEP, feasibility summary and other documents) for NLET review and concurrence.

State Directors with active land exchange programs are encouraged to develop state specific management oversight, review processes and program guidance. Consideration may be given to returning oversight responsibility to State Directors once improved program management and effectiveness is demonstrated.

State Offices provide program expertise, training, additional guidance and examples as necessary for feasibility reports and subsequent land exchange processing.

State Offices are also responsible for identifying to WO-350 those areas of policy and guidance they feel are inadequately responding to the issues associated with implementing a land exchange program.

Congressional Notification per IM 2008-197 c. Washington Office Responsibilities: The Washington Office has established review and concurrence requirements for the land exchange process, at both the feasibility and decision stages.

The Washington Office (WO-300) also has expertise and capability available to assist Field and State Offices that are seeking advice and counsel, and examples or specialized assistance for dealing with controversial, technical or legal issues.

F. Developing Exchange Proposals with Third Party Facilitators

In many instances, the BLM develops and completes land exchanges and other types of acquisitions by working directly with private landowners. However, there are also many occasions where third party facilitators can play an important role in processing land exchanges and other types of land acquisition proposals. In some cases, private landowners may prefer to be represented by a facilitator in the land exchange process. In other cases, the BLM may be assisted in reaching its land acquisition management objectives by third party facilitators. Often facilitators are utilized in assembled land exchanges to deal with multiple tracts of Federal or non-Federal land in the exchange (see Chapter 11 for detailed information on assembled land exchanges). Third party facilitators, whether non-profit or for-profit, are not agents of the Federal government and freely negotiate and participate in real estate transactions at their own risk.

Third party facilitators can play an important partnership role in enhancing the BLM's capability to achieve the public benefits associated with land exchanges and other forms of Federal land acquisitions. Whenever a third party facilitator is involved in developing land exchange proposals and/or in carrying out land exchange processes, the BLM must ensure that the transactions reflect the priorities identified in the land use plan and annual work plan, and are processed consistent with laws, regulations, policies and guidance. Remember a full disclosure provision must be included in the ATI with a third party exchange facilitator (see Chapter 1, G. 7.b and Chapter 4).

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1. Examples of Situations Where Third Party Facilitators May Be Effective.

- a. The non-Federal parties may prefer to use a facilitator to expedite the process, reduce costs, obtain potential tax/financial benefits or real estate expertise, and for a host of other reasons.
- b. Third party facilitators can assist in expediting real estate transactions. Where land is for sale on the private market or when willing sellers are located and the BLM does not have immediate access to acquisition funding, facilitators can act quickly to secure purchase options or purchase properties. Facilitators may also assist in resolving title problems, securing outstanding property interests and/or in providing contractual resources to complete land surveys¹¹, appraisals or in conducting NEPA evaluations.
- c. Third parties can assist in building local, state or national support for land acquisitions. Third parties can be effective partners in showcasing conservation, recreation and open space values to the public and building support for projects and programs.
- d. Where multiple ownership interests, multiple parcels, or multiple phases of a single acquisition are involved, a third party facilitator may represent the multiple interests in an exchange with the BLM. See Chapter 11 for additional detail on roles and responsibilities of third party facilitators in assembled land exchanges.

2. Guidelines for Conducting Exchanges with Third Party Facilitators.

- a. Pursue only those transactions that are consistent with land use plans and that can be supported as a local priority when considering workload capabilities and constituent positions.
- b. Inform facilitators of the risks inherent in processing land exchanges. The third-party facilitator usually shares in the costs and responsibilities for processing land exchanges. Expenses incurred by third party facilitators are at their own risk. Facilitators must be made aware of those risks and the non-binding nature of land exchange agreements, including the possibility of expending significant processing costs with no guarantee of completing the land exchange.
- c. Minimize situations where a single third party facilitator is exclusively relied on by the BLM or non-Federal parties. When inviting facilitators to participate in specific transactions, the BLM must utilize the entity that can best benefit the agency.
- d. Clearly define policies and procedures for conducting land exchanges and ensure that the BLM can provide an adequate level of guidance, review and timely approval of services and products provided by third party facilitators. Clear and consistent communication related to objectives, roles, responsibilities, and time frames are essential to maximizing the benefits of using third party facilitators.

¹¹ Consult with Cadastral Survey before contracting land surveys.

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3. Specific Guidelines Applicable to Nonprofit Conservation Organizations as Exchange Facilitators.

Nonprofit conservation organizations have a long history of assisting the BLM and other Federal agencies in acquiring non-Federal property with significant resource or conservation attributes. Over time, the number of such organizations has grown and now includes not only the well-known national organizations but also a growing number of local land trust organizations.

The Guidelines contained in Illustration 2-1 apply to working with all nonprofit conservation organizations in Federal land acquisitions. While largely devoted to fee purchases, the Guidelines are also relevant to land exchanges. These Guidelines were published in the Federal Register on Aug. 10, 1983 (Vol. 48, No. 155) and reviewed and updated by the Department of the Interior in 1995 (see Illustration 2-1).

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Illustration 2-1 Guidelines for Transactions between Nonprofit Organizations and Agencies and the Department of the Interior

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240
AUG. 28, 1995

Memorandum

To: Director, Bureau of Land Management
Director, National Park Service
Director, U.S. Fish and Wildlife Service

From: Bonnie R. Cohen,
Assistant Secretary-Policy, Management and Budget

Subject: Clarification to August 10, 1983, Guidelines for Transactions Between Nonprofit Organizations
and Agencies of the Department of the Interior

These clarifications have been developed in response to the Inspector General's May 1992 Audit Report on land acquisitions conducted with the assistance of nonprofit organizations (Report No. 92-I-833). The guidelines apply to real estate transactions pursuant to letters of intent between nonprofit organizations and the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and other agencies of the Department of the Interior utilizing funds appropriated from the Land and Water Conservation Fund.

For purposes of these guidelines, the term "nonprofit organization" shall include, but is not necessarily limited to, nonprofit organizations and other corporations or similar legal entities which acquire lands and interests therein for possible sale to the United States.

Introduction

Because of the lengthy time requirements in the budgeting and appropriation process, Federal agencies are frequently unable to acquire land in response to imminent threats to critical resources or to buy needed resources under favorable terms. With the ability to act quickly in the private market and maintain flexible working relationships, nonprofit organizations can assist and support Federal land acquisition programs. However, the role of nonprofit organizations in acquiring land or interests in land for ultimate Federal acquisition must be clearly and carefully defined in each transaction in conformity with these guidelines.

General Policy

Nonprofit organizations serve a very useful role in acquiring lands and interests in land having significant public values. Federal agencies are encouraged to work with such organizations and entities consistent with these guidelines.

Guidelines

1. No agency relationship. Nonprofit organizations are not in any manner agents of the Federal Government unless

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an agency relationship is specifically designated in writing by mutual consent of the parties. Nonprofit organizations are typically private independent groups which freely negotiate real estate actions anywhere and anytime they desire and do so at their own risk. In transactions with the agencies of the Department of the Interior, nonprofit organizations shall not incur any liability or responsibility for payment of any relocation or other benefits under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646).

2. Applicability to certain properties proposed for conveyance to the United States. These guidelines do not apply to situations where the history of the transaction clearly demonstrates that the initial acquisition by the nonprofit organization was not made in contemplation of resale. Typically, factors such as the length of time between initial acquisition and proposed resale to the Government, the terms of the initial transaction, and the use of the property in the interim period will be considered. Each case will be determined on its own merits.

3. Agency acquisition priorities. Lands or interests in lands acquired from a nonprofit organization or other entity shall be in accord with priorities set by the acquiring Federal agency, consistent with the agency's acquisition authorities, and limited to tracts that the agency has determined need to be acquired. Because of statutory, budgetary and policy considerations associated with any land acquisition transaction, the objectives of the Federal agencies must supersede those of the nonprofit organization.

4. Areas of acquisition. Lands or interests in land acquired by Federal agencies from nonprofit organizations must be within the boundaries of authorized areas or otherwise authorized by law.

5. Letters of intent. In each case where a nonprofit organization intends to acquire land for subsequent conveyance to a Federal agency and seeks prior assurance from the agency of its interest in and intent to take such a conveyance, the nonprofit may request and the agency may give a letter of intent to acquire. Such a letter of intent should also be used whenever an agency requests the assistance of a nonprofit organization in a proposed acquisition. If given by the Federal agency, the letter of intent to the nonprofit organization shall, at a minimum:

- (a) identify the land or interest in land which the agency desires to acquire;
- (b) state the estimated purchase price or other consideration subject to future appraisal;
- (c) state the projected time frame as to when the agency intends to acquire the property; and,
- (d) contain a statement indicating that should the agency be unable or decline to purchase the land within the projected time frame or at any time, disposition of the land or interests in land by the nonprofit organization or other entity is without liability to the Federal government.

6. Access to records and financial information. The acquiring Federal agency shall have the right to inspect the records of the nonprofit organization to verify the option price and other terms and conditions of any acquisition undertaken pursuant to a letter of intent, including all appraisals made of the property.

The nonprofit organization must be able to document and substantiate all expenses claimed in the transaction. Records shall be made available for inspection upon reasonable prior notice from the authorized representative of the Department.

7. Prohibitions on interest payments by Federal agencies. No agency shall pay nonprofit organizations for any interest incurred or foregone by the nonprofit organizations as a result of their participation in land acquisition transactions. (This practice has been discontinued since the Department of the Interior Solicitor's July, 1992 opinion which stated that there was no legal basis for making payments.

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8. Acquisitions. In acquiring property from a nonprofit organization, a bureau of the Department of the Interior may pay either:

a) the fair market value of the property, based upon the bureau-approved appraisal and agreed upon by the acquiring bureau and the nonprofit organization, or such lesser figure at which the nonprofit organization offers to sell the property; or

b) the purchase price paid by the nonprofit organization to acquire the property from a third party, not to exceed the appraised fair market value approved by the acquiring bureau, plus related and associated expenses from a list approved by the Assistant Secretary for Policy, Management and Budget. The expenses shall be those which the Department would have incurred itself in acquiring the concerned property. Payment of a predetermined overhead cost may be approved in special cases subject to the approval of the Secretary.

9. Requirements for appraisals. Appraisals of land to be acquired from nonprofit organizations shall be prepared either by the purchasing agency or by an appraiser approved by such agency. Appraisals shall conform with the Uniform Appraisal Standards for Federal Land Acquisitions*.

In addition, reviews of appraisals of land to be acquired from nonprofit organizations pursuant to letters of intent shall be no more than six months old in order to reflect current market analysis.

**** Note for an update on DOI Appraisal Policy see Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)***

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Illustration 2-2 Feasibility Analysis Outline

1. Description of Land Proposed for Exchange
 - Short narrative description of the Federal and non-Federal land/interest in land being considered, including the major resources involved and which resources or programs would benefit from the exchange.
 - Explanation of why the exchange is a priority and potentially in the public interest. Discuss your consideration of other land tenure management alternatives to the land exchange proposal. As a minimum address use of competitive land sale authority for Federal lands.
 - Accurate and complete legal descriptions of the Federal and non-Federal land (normally shown as attachments), including a discussion of cadastral survey needs.
 - Identification of all interests in land to be conveyed or reserved.
 - Preliminary title evidence and outstanding third party interests.
 - Documentation on any structures, facilities or improvements and assessment of condition and associated future management cost. See BLM 1530 Manual for business analysis requirements.
 - Maps of lands being exchanged.
2. Consistency with Land Use Plans and Legislative Designations
3. Anticipated Land Use
4. Preliminary Review of Resources
5. Valuation Analysis
6. Funding/Staffing Availability
7. Funding Sources
8. Estimated Time Frames for Completing the Exchange
9. Other Information (include mineral potential, encumbrances, reservations, split-estate or other issues for the federal and non-federal lands)
10. Attachments
 - Issue Paper that can be updated as needed
 - Draft Notice of Exchange Proposal and Draft Agreement to Initiate
 - Title Evidence

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Illustration 2-3

LAND EXCHANGE FEASIBILITY SUMMARY

State _____ Serial Number _____ Exchange Name _____
Field Offices and Counties involved _____
Acreage proposed for exchange (Federal and non-Federal) _____
Parties to the exchange (including other Federal agencies) _____

Summary of Proposal (Bullets to include brief description of lands and interests in land proposed for exchange, such as severed minerals or split estate, water rights, unusual reservations/encumbrances, objectives to be served by the exchange and a description of any parties acting as facilitators. Explain consideration given to other land disposal and acquisition tools as an alternative to the land exchange.)

- _____
- _____
- _____
- _____

Land Use Plan Consistency (Citation of applicable land use plan decisions for both Federal and non-Federal land and how the plan specifically supports acquisition and conveyance. If applicable, description of any supplemental planning, such as activity plans, project plans, etc. that may supplement or provide more specificity to land use plan decisions. Description of any proposed plan amendments necessary to support the exchange proposal. If applicable, description of any state or local planning, or planning by other entities that relates to the exchange proposal.)

Public Interest Factors (Summary of the factors considered in making a preliminary determination of public interest at the feasibility stage, including brief analysis of resource trade-offs considered.)

Valuation Analysis and related Information (Describe valuation analysis process considered to reach a preliminary determination that the exchange would be approximately equal value and the process being undertaken to determine values. Identify any unique, complex or potentially controversial aspects of the valuation process. Include value implications of various alternatives, land or parcel configurations, conveyance groupings, timing or other approaches. Explain strategy for equalizing values by adjusting lands included in the exchange.)

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Mineral Issues (Include discussion of mineral potential, conclusions of the mineral report, encumbrances, reservations, split-estate, future management and other minerals related issues for the Federal and Non-Federal Lands.)

Land Exchange Issues (Identify issues which have been raised or are anticipated, support or opposition by public, State/local government, interest groups, etc., summary of efforts to communicate exchange proposal, need for a communication plan, potential controversy, constructed assets, unique aspects or risk) _____

Solicitor's Office Feedback (Summarize feedback from Solicitor's review of proposal.)

Summary (Extent to which the proposal conforms to feasibility requirements, deficiencies noted and any conditions placed on approval.)

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Illustration 2-4

ISSUE PAPER FORMAT FOR LAND EXCHANGES

Subject: Exchange Name, County and State.

Issue Summary/Status: Brief description (if an assembled exchange, describe this transaction in the context of the big picture) and status of case processing (i.e., ready to sign ATI and publish Notice).

Background: Identify the exchange parties (explain the relationship of various parties who may be involved, including other Federal agencies). Explain the benefits of the exchange. Identify the resource values to be acquired and the objectives being served that are the basis for our determination that the exchange is in the public interest. Explain when key steps were completed (include a chronology, if helpful). In addition, mention the type of interest has been expressed in the proposed exchange. Make sure to include a statement concerning Bureau of Land Management (BLM) land use planning conformance for both the Federal and non-Federal land.

Valuation Analysis Summary: Beyond identifying the approved fair market values of the Federal and non-Federal land, this section also needs to address the following: who completed and reviewed the appraisal (ASD or contract appraisal, dates of approval, updates, etc.); the determination of highest and best use (HBU) of the properties (whether the existing use differs from the HBU on which the appraisal was based); and, as appropriate, the need for and source of equalization payments, explanation of related Land and Water Conservation Fund acquisition, and ledger management issues (a summary of previous transactions and values). For exchanges with multiple parcels, a table identifying acreage, values, and appraisal dates for each parcel would simplify some of this information.

Outreach Efforts/Position of Major Constituents: Who supports the exchange, who doesn't, the extent of public comment expected from the Notice of Exchange Proposal or other notices, and whether protests are anticipated. For large, controversial or sensitive exchanges or where significant media attention has already been focused, it may be appropriate to develop a detailed communication plan which would establish proposed dates of news releases in conjunction with key exchange processing dates. In these instances, advance planning to clarify communication objectives and provide a framework for getting our message out would be helpful.

Contact: State Director, Field Office Manager, realty specialist, as appropriate.

This format is from IM 2000-107 and was updated by IM 2003-028.
Both are outdated. Check with the State Realty Lead or WO-350
for the most current version of the briefing paper.

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Chapter 3 - Addressing Land Exchange Processing Costs

A. When to Begin Estimating Costs

Processing land exchanges requires substantial multi-year commitments of both funding and staffing. An accurate projection of these funding and staffing commitments must be completed before initiating work on an exchange. Once exchange processing is initiated, it is important to track and monitor the costs and time frame commitments to keep the exchange on track and to document any mid-course adjustments to the projected time frames or cost commitments. This chapter contains information on projecting, assigning and monitoring costs and commitments, as well as options and alternatives that can be considered for shortfalls in available funding.

Developing accurate cost projections is an essential part of assessing land exchange proposals. Costs and commitments are a component of the information managers consider in evaluating land exchange proposals. Managers will have to assess the exchange processing costs and workloads in order to evaluate how the commitment to process an exchange will affect other workloads. Field Office Managers will use this information to help identify other work which might be foregone in order to maintain the exchange processing commitments over what will likely be a several year period. Additionally, exchanges require time and workload commitments from other levels of the organization. Accurately projecting costs and time frames at the feasibility stage allows managers to communicate those assistance needs and secure the necessary commitment to keep the project on schedule.

B. Assignment of Costs and Responsibilities

The BLM policy is that parties to an exchange will appropriately share in the total costs and responsibilities for processing the exchange. In most cases, the expectation is that the parties will share these costs equally. In Section E. of this Chapter, you will find information on considering alternatives to an equal division of costs and responsibilities. An investment in the responsibilities for processing an exchange helps to maintain the level of involvement necessary to keep all parties committed to processing, and in facing any hurdles that may develop in processing a land exchange proposal.

In initial discussions, it is important to advise facilitators or other non-Federal parties of the expectation that they share in land exchange processing costs and responsibilities. An effective way of conducting such discussions is to use the land exchange processing steps shown in Illustration 1-1 and the Cost Estimate example found in Illustration 3-1. The Exchange Processing Schedule, Cost and Responsibility Assignments found in Illustration 4-1, Exhibit C may also be useful in outlining estimated costs. This approach provides non-Federal parties with an accurate representation of the complexities involved in exchange processing. It is important to note that exchange parties unaccustomed to Federal exchange requirements will not know of some of the critical aspects of the process, such as the level of public notice and involvement, appraisal and review standards, and protest and appeal processes.

All parties to the land exchange should be fully aware of the process, timeframes and costs involved. An up-front knowledge of the processing costs and timeframes assists in developing realistic

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expectations that is preferable to significantly reassessing timeframes and costs when problems, shortfalls or time delays occur. For many non-Federal parties, time is money and they are often more than willing to contribute their share or assume more of the responsibilities, particularly if they can be provided with some reasonable assurance that doing so will keep time frames from slipping.

C. Estimating Costs

The BLM's land exchange processing costs are comprised of labor costs for personnel, non-labor costs, such as newspaper publications and travel, and indirect or overhead costs.

1. Labor Costs. The BLM's labor cost usually comprises the single largest and most significant cost component in completing exchange processing. There are two methods for estimating labor costs, either of which may be used. The two methods vary in the level of detail utilized in developing the estimate. Consider the total cost, time frame and sensitivity associated with processing in selecting the method to use.
 - a. Averaging Method. Obtain the average work month cost for each office involved in processing the land exchange, or use the statewide average work month cost. Budget staff in either the State Office or Field Office can provide these figures. These averages include the leave/benefits surcharge and can be applied directly to estimates of time involved in a task. Since a work month includes 173 hours of labor, it may be simplest to break tasks into units no smaller than a week for estimation purposes. For each task identified, consider labor costs needed for all staff that may be involved in the completion of the task, including significant contracting, procurement, staff assistance or data entry assistance that may be needed for some tasks.
 - b. Detailed Method. A more detailed estimate can be prepared based on individual labor costs. This may be necessary if the disparity between individual labor cost is too great or the amount of time required from various individuals is too varied to rely upon averages. In this case, obtain the individual hourly labor rates from the Management Information System (MIS) from budget staff in either the State Office or Field Office. These hourly rates include leave and benefits surcharges and indirect cost that you can use along with the time estimates to produce a labor cost estimate.
2. Non-Labor Costs. Non-labor costs can consist of a number of different types of expenses, including publication costs, travel costs, vehicle costs, and contracted services for inventories, studies and reports. If either the BLM or the non-Federal party anticipates using contracted services in exchange processing, cost estimates must be developed to determine anticipated contracting costs.

Estimate publication costs for local newspapers taking into consideration the length of the legal descriptions. If an environmental impact statement (EIS) or plan amendment is needed to process the land exchange, consider the additional publication needs and costs, including *Federal Register* publication requirements.

Consider whether travel will be necessary to accomplish any tasks and identify the staff needing to travel, the number of estimated days of travel, and calculate lodging and per diem based on the

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travel area. Add to this anticipated transportation costs to reach a total travel cost estimate.

Vehicle costs and other miscellaneous costs such as film processing or copying should also be included.

Total these suggested components and any others that may be applicable to arrive at an estimate of processing costs.

3. Indirect Costs. Whenever the BLM incurs a labor or non-labor cost, indirect costs are also incurred for overhead functions, such as accounting, budgeting, and administrative support. These costs are expressed as an indirect cost rate, which is revised annually to reflect the BLM's actual cost of doing business. The current indirect cost rate is available from the budget staff. When MLR funding sources are used for exchange processing, these support costs have been built into the MLR budget, and the accounts have already been assessed with the BLM's indirect cost.

However, if the proposed funding source is from a contributed or reimbursable account (1920, 5440 or 7122), these indirect costs must be factored in to the estimate to account for actual costs that will be incurred. It is possible to obtain a waiver of the application of the indirect cost rate for a specific reimbursable or contributed funds account, although it must be kept in mind that indirect costs are incurred nevertheless and must be absorbed within the existing office budget. As a general rule waivers are discouraged, but there are situations where it may be appropriate to request one, depending on the types of costs to be charged to the account. For example, when the entire account is to be utilized for a single procurement action not requiring significant time to implement, a waiver would be appropriate to consider. By contrast, an account that will incur numerous labor costs and a variety of non-labor costs would generally not be considered appropriate for a waiver request.

The State Director can waive indirect costs for contributed funds accounts (7122) in response to a waiver request from the Field Office Manager or other manager responsible for the exchange. Only the BLM's budget officer can waive indirect costs for reimbursable accounts (5440), with a request signed by the State Director. Check with budget staff on specific requirements for waiver requests.

D. Key Points in Assigning Costs

In assigning costs the goal is to share costs and responsibilities in a fair and equitable manner. When considering who should be responsible for different aspects of exchange processing, it must be remembered that all work must conform to the BLM standards and must be prepared in a manner that will serve as adequate documentation needed for decision making. A wide variety of consultant-provided services are available in the private sector for tasks such as environmental site assessments, biological/cultural inventories and assessments, mineral reports, NEPA documents and appraisals. When the BLM chooses to contract for such services using either Federal funds or non-Federal party provided funds, Federal contracting procedures must be utilized. Those procedures generally require coordination with a contracting officer to develop specifications, solicit bids and assign a contracting officer authorized representative to assist in administration of the contract. Carefully consider the complexities and administrative costs associated with these procedures before opting to utilize federally contracted services.

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Certain tasks or responsibilities are inherently suited for the land exchange facilitator or other non-Federal parties to provide related to the non-Federal property. Those tasks include title information, title clearance, preparation of conveyance documents, completion of the environmental site assessments, and a pro rata share of closing costs.

For the collection of other data, a good general rule is to assign entire tasks to one entity. As the objective for many of the required data collection and analysis efforts is to be able to weigh the resource attributes of one property against another, it makes sense where possible to have the same evaluator review both Federal and non-Federal land. It is generally easier to assign discrete tasks or reports to each party, rather than attempting to divide the costs associated with the completion of those tasks or reports.

The BLM can prepare a notice for publication and provide it to the facilitator or non-Federal party, along with publication instructions so that they may arrange for newspaper publication and pay for those services. Likewise, a non-Federal party can arrange for mailing copies (regular or certified mail) of notices to mailing lists developed by the BLM for exchange proposals. A facilitator or other non-Federal party also can work with title companies to obtain names and addresses of adjacent landowners to ensure that they are notified of the exchange proposal. This is a service that title and other companies routinely provide in the private sector.

E. Considering Alternatives to an Equal Division of Costs and Responsibilities

There are three alternatives to an equal share of costs and responsibilities. The first is for the non-Federal party to absorb additional costs. A second is for the BLM to absorb additional costs and a third is to offset costs by adjusting relative land values on either side of the exchange. Whenever the BLM considers the need to assume a larger share of costs or to offset costs through compensation, there are specific evaluation criteria and documentation requirements that must be met. These requirements are addressed in 43 CFR 2201.1-3. Additional information on each of the three options for diverging from the equal cost-sharing principle is described below.

1. Non-Federal Party Voluntarily Assumes Additional Cost and Responsibilities. Land exchange facilitators and other non-Federal parties often voluntarily agree to cover additional costs and responsibilities of the land exchange process as a means of expediting schedules. Such agreements allow the BLM to expand its capability to process land exchanges, providing there is a clear understanding that such actions have no bearing on the final outcome of considering the proposal. When the BLM agrees to allow for such voluntary assistance, good communication and coordination are critical to ensure that these assumed responsibilities are actually serving to make the process more expeditious and efficient. The documentation for voluntary assumption of costs or responsibilities is completed in the feasibility report and ATI or amendments thereto. There are two methods by which a non-Federal party can provide voluntary assistance, discussed below:
 - a. Non-Federal Party Provided Services. Non-Federal parties may contract for a variety of professional services including mineral reports, T&E species evaluations, cultural evaluations, environmental site assessments and preparation of NEPA documentation. Keep in mind that all such services must be completed to the BLM standards and in certain cases, the coordination and

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review processes for such contracted services may outweigh the benefits of having the work completed externally. Certain activities may require specific qualifications (i.e., appraisals, environmental site assessments, and cultural resource surveys) and coordination with the approving official is critical to ensure the non-Federal party is aware of those requirements prior to soliciting for professional services. One alternative is to include the BLM as a co-client on any non-Federal party contracts. As a co-client, the BLM should receive the reports at the same time as the non-Federal party. The ATI should include a provision for non-Federal party-contracted services indicating that Federal review and approval is a condition of an acceptable work product. Advanced consultation and approval from DOI ASD is required for any non-Federal party-contracted appraisal work.

- b. **Non-Federal Party Provided Funding.** Non-Federal parties may provide funds via a proffer form (Temporary Form 1380-11), making the funds available to the BLM for use in exchange processing. The BLM places these funds in a 1920, 7122 or 5440 account; information on such accounts is available in Bureau Manual 1323. The BLM may utilize the reimbursable funds in a variety of ways to accomplish exchange processing. Funds may be utilized to cover salary for staff involved in completing field inventories and assessments. Funds may also be utilized to contract for services. When considering contract services, the BLM and non-Federal party should carefully evaluate if it would be more cost effective for the non-Federal party to contract for the services directly, reducing the BLM procurement workloads and eliminating the need to charge the non-Federal party the indirect cost rate.
2. **The BLM Assumes Additional Costs and Responsibilities.** Whenever the BLM absorbs more than the appropriate share of costs, BLM must document that the assumption of costs/responsibilities normally borne by the non-Federal party is in the public interest. The feasibility report and ATI are the proper place for such analysis and documentation. Occasionally, such an arrangement is not anticipated initially, but may be considered later in the process. When this happens, the ATI must be amended to document the decision to assume additional costs and the State Director must concur with this decision.

The documentation requirements for a decision to assume additional costs are contained in the regulations at 43 CFR 2201.1-3. The regulation provides that BLM may assume additional cost only when it is clearly in the public interest, the amount of the cost assumed is reasonable and accurately reflects the value of the good and services received, the proposed exchange is a high priority of the agency, and the exchange must be expedited to protect important Federal resource values. It must also be demonstrated that there are no other practicable means available of meeting the exchange processing cost.

3. **Compensation for Costs Assumed by Either Party.** Discretionary authority exists to compensate one party to an exchange for all or part of the costs assumed on the behalf the other party (43 CFR 2201.1-3). In essence, the provision allows either party to use land value to help fund the cost of processing an exchange. These adjustments do not alter the appraised value of the land involved in an exchange. Utilizing such discretionary authority requires careful consideration, and should not be construed as a wholesale license to pay for administrative costs. Because this authority should only be utilized in rare and unusual circumstances, the example format for an ATI (Illustration 4-1) contains a standard disclaimer that compensation will not be allowed. It must be remembered that

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the decision to compensate a party for processing costs will be judged by the same public interest criteria used in making the exchange decision.

Whenever compensation through land value is considered, BLM must document that such compensation is in the public interest. The feasibility report and ATI are the proper place for such documentation. The BLM also includes compensation of cost on the ledger.

Occasionally, such an arrangement is not anticipated initially, but needs to be considered later in the process. When this occurs, the ATI must be amended to document the decision to compensate. Such ATI amendments must be approved by the State Director.

Invoices or some other form of evidence to support the reasonableness of the cost of goods or services must be part of the case file record. Additionally, where compensation of costs is utilized, the total amount of adjustment for equalization and compensation for costs incurred cannot exceed the limitations in 43 CFR 2201.6, or 25 percent of the value of the Federal land conveyed.

The regulations at 43 CFR 2201.1-3 provide a description of the types of costs that may be subject to assumption or compensation. The following are several examples where compensation may be appropriate:

- The BLM or non-Federal party wants the exchange scheduled before the BLM has the funds to process the work. The non-Federal party can assume the responsibility for performing this work and be compensated by the BLM for all or a portion of these costs.
- Survey work is needed on Federal and non-Federal lands in the proposed exchange. For efficiency purposes, the BLM cadastral survey staff could complete all required survey work. As compensation for such work on the non-Federal lands the BLM would receive additional non-Federal lands or an increased equalization payment.
- Cultural resource inventories have resulted in a need to perform cultural mitigation on the Federal land before conveyance can occur. Because of the time and cost involved, the BLM currently is unable to undertake the mitigation efforts, and the non-Federal party agrees to contract for the required work. The BLM estimates its costs for completing the work, and agrees to compensate for the costs with additional land value, or to provide cash equalization to the non-Federal party. Under either compensation method, the amount of compensation is limited to actual costs (approved by BLM) rather than estimated costs.

F. Cost Liability if an Exchange is Not Completed

An ATI is a non-binding agreement that is contingent upon a favorable decision by the authorized officer, and therefore no liability can be incurred if an exchange is not completed (43 CFR 2200.0-6). If an exchange facilitator or other non-Federal party voluntarily agrees to complete all of the processing work associated with a land exchange, or if the BLM makes a decision to compensate for these services and the exchange is not completed, there is no mechanism by which compensation can occur.

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G. Monitoring and Adjusting Costs, Responsibilities and Time Schedules

As with any plan containing time frames and estimated costs, monitoring and tracking progress throughout the process is essential to identify when adjustments are indicated. Because there is likelihood that some land in the exchange proposal will be removed from further consideration as surveys and inventories identify resource conflicts, or as appraisals are completed, the need to adjust the exchange proposal is common. Additionally, costs and time needed to complete various components of processing often vary from what was initially anticipated, and thus affect both the time frames and the split of costs, which in turn may change the assumption of costs and amount of compensation to be provided. As the need to make adjustments arises, it is essential to document the changes by amending the ATI.

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Illustration 3-1
Example Land Exchange Processing Workload and Cost Estimate

Description of work	Estimated Cost of work	Responsibility for Cost	
		BLM	Non-Federal party
Record notation/initial adjudication/ preparation of NOEP etc.	\$3,500	\$3,500	
Title review and opinions	\$2,000	\$1,000	\$1,000
Mineral report	\$9,000	\$9,000	
Cultural surveys \$30,000			\$30,000
Biological surveys	\$12,000	\$9,000	\$3,000
Hazmat/ESA \$14,000		\$7,000	\$7,000
Cadastral survey* \$37,000		\$37,000	
Private survey * \$18,000			\$18,000
Newspaper publications	\$1,800		\$1,800
Appraisals and review (DOI ASD) \$60,000		\$15,000	\$45,000
Public meetings, local government coordination etc.	\$3,000		\$3,000
Preparation, review of NEPA documents	\$36,000	\$20,000	\$16,000
Patent prep, final adjudication, final title	\$2,000	\$1,000	\$1,000
Escrow/closing costs	\$3,000	\$1,500	\$1,500
<u>TOTAL</u>	<u>\$211,300</u>	<u>\$104,000</u>	<u>\$127,300</u>

* Consult with Cadastral Survey concerning land survey cost and reviews.

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Chapter 4 - Agreement to Initiate an Exchange

A. The Purpose of an Agreement to Initiate

The purpose of the Agreement to Initiate (ATI) is to document the roles, responsibilities and time frames for processing the land exchange. Regulatory emphasis is placed on establishing a time schedule for completing the appraisal process and reaching an agreement on value.

B. Non-Binding Nature of the Agreement to Initiate

Entering into an ATI does not legally bind any party to proceed with processing or consummate an exchange. An ATI does not require any party to reimburse or pay damages for delays or proposals not consummated (43 CFR 2201.1(f)).

C. When to Develop and Enter into an Agreement to Initiate

An ATI is drafted as a part of completing the initial evaluation and feasibility report for a land exchange proposal. An ATI is not executed until after approval of the feasibility report by the BLM Deputy Director.

D. Authority to Execute, Amend or Terminate an Agreement to Initiate

Field Office Managers generally sign an ATI. However, under the following circumstances the State Director, rather than the Field Office Manager, must approve the ATI:

- Compensation for assumed costs/responsibilities by the non-Federal party is proposed (See Chapter 3);
- the BLM agrees to assume more than an equal share of the costs/responsibilities for processing an exchange;
- an assembled exchange ledger is being proposed (including whether to secure imbalances of value owed to the United States);
- bargaining, other methods or arbitration are proposed; or,
- Approval of certain hazardous material agreements is required (BLM Manual 1203).

Field Office Managers have primary responsibility for implementation and oversight of exchange processing, paying particular attention to time commitments included in the ATI. The ATI may be amended at any time by written consent of the parties and may be terminated at any time by any party by providing written notice to the other parties as specified in the ATI (generally 30 days advance notice).

An ATI should be amended to accurately reflect the time schedules and responsibilities for processing. When the ATI is signed, the costs and time frames reflected are estimates. Once processing is underway, schedules need to be amended to reflect the commitments necessary for completing processing tasks. Field Office Managers also have the responsibility to see that amendments to the ATI are completed, ensuring that the document accurately reflects and communicates all appropriate changes to the exchange proposal and processing. The exchange

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parties must amend the ATI if the Notice of Exchange Proposal is amended or supplemented, if there is a change in responsibilities that will trigger assumption of costs, or when adopting assembled exchange processing provisions. Additional review and approval may be appropriate if the proposal has changed significantly, but in most instances would not be needed for revision of schedules or other minor changes. Consult with the NLET regarding the need for any additional review or approval for land exchange proposals

The Field Office Manager also has the authority and responsibility to withdraw from and terminate Agreements to Initiate when processing is abandoned. All amendments and terminations are done in writing. Amending, withdrawing or terminating an ATI is not a decision subject to protest or appeal pursuant to 43 CFR Part 4. Additionally, there are no obligations or reimbursements authorized where an ATI is terminated, even where compensation of costs is addressed (see Chapter 2, Section E. and Chapter 3, Section F. for additional detail).

All parties to the land exchange must sign the ATI. If multiple BLM offices are involved, a lead office is established in the feasibility report and signing authority is generally with that office, which is responsible for the coordination among the offices. The non-Federal party may also wish to identify a primary point of contact for coordination and communication related to implementation of the ATI.

When an exchange is being processed for the benefit of another Federal agency, the other agency also signs the ATI and identifies a primary point of contact and responsibilities it will contribute to exchange processing. Additional information on exchanges benefiting other agencies is contained in Chapter 14.

E. Minimum Content Requirements for an Agreement to Initiate

The ATI must address eighteen mandatory items. Of these, 17 items are identified in the regulations at 43 CFR 2201.1(c) through (g). The last item is an administrative requirement for inclusion of a full disclosure provision in land exchange proposals.

Illustration 4-1 that follows provides a format for Agreements to Initiate which contains all the minimum requirements and the most common supplemental provisions generally included. Departure from the format shown in Illustration 4-1 must ensure that any alternative format includes the 18 mandatory requirements identified ~~above.~~ below.

1. Requirements of Regulations (43 CFR 2201.1). Listed below are the 17 items cited in the regulations, with some additional explanation of the materials or further information that generally supplement these requirements:

“(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;”

The non-Federal party must show that they have title to the non-Federal land or otherwise have the ability to convey the property in exchange. Also, include a statement that the non-Federal party is required to provide preliminary title evidence, and later, a title insurance policy prepared to Department of Justice standards at their own expense.

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“(2) A description of the lands or interest in lands being considered for exchange;”

A complete legal description of the Federal and non-Federal land

“(3) A statement by each party, other than the United States, State, and local governments, certifying that the party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;”

A statement from the non-Federal parties that they are qualified for United States citizenship or Statement of Citizenship (Form 5450-9 or equivalent). A statement showing that the agent is authorized to represent a corporation, partnership, or trustee. For corporations, a statement is needed showing that the corporation is incorporated and in good standing in the State (see BLM Handbook H-1860-1).

“(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, adverse claims, covenants, restrictions, title defects or encumbrances;”

For the Federal and the non-Federal land, compile a complete list of all outstanding third party interests, reserved rights or interests, and authorized uses/users.

“(5) A time schedule for completing the proposed exchange;”

“(6) An assignment of responsibility for performance of required functions and costs associated with processing the exchange;”

“(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of Sec. 2201.1-3 of this part;”

“(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands, and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to Sec. 2201.7-2 of this part;”

“(9) A grant of permission by each party to conduct a physical examination of the lands offered by the other party;”

“(10) The terms of any assembled land exchange arrangement, pursuant to Sec. 2201.1-1 of this part;”

“(11) A statement as to any arrangements for relocation of any tenants occupying non-Federal land, pursuant to Sec. 2201.8 (c) (1) (iv) of this part;”

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Refer to Chapter IX of BLM Handbook H-2100-1 for information on relocation requirements.

“(12) A notice to an owner/occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to Sec. 2201.8 (c)(1)(iv) of this part;”

Refer to Chapter IX of BLM Handbook H-2100-1 for information on relocation requirements.

“(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed;”

The agreement must explain the closing method (simultaneous or non-simultaneous), whether the parties will use an escrow and how the conveyance documents will be delivered.

“(14) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed ATI an exchange, the parties shall arrange for appraisals, which are to be completed within time frames and under such terms as are negotiated.”

The regulatory timeframes for appraisals are generally replaced with those specifically developed and agreed upon for each particular exchange proposal. The provision contains recommended language for reaching an agreement on value based on an approved appraisal per 43 CFR 2201.4. The ATI should also include a provision, if applicable; explaining how multiple parcels or ownerships of non-Federal land would be valued. If included, the provision must also indicate that the Federal land will be valued in a similar manner. See Chapter 7 for additional guidance on valuation analysis and appraisal.

“(15) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is delayed or is not consummated or to anyone assisting in any way, or doing business with, any such party.”

“(16) An agreement to initiate an exchange may be amended by written consent of the parties or terminated at any time upon written notice of any party.”

“(17) The withdrawal from, and termination of, an exchange proposal, or an agreement to initiate an exchange, by the authorized officer at any time prior to the notice of decision, pursuant to 2201.7-1 of this part, is not protestable or appealable under 43 CFR part 4.”

2. Full Disclosure Requirement. It is BLM policy (see Chapter 1, Section G. 7) to include a full disclosure provision in the ATI for all land exchanges involving a third party facilitator. The required full disclosure language to be included in the ATI is shown in Illustration 4-1 as the Facilitated Land Exchange Provision. The language of this provision was developed by the DOI Office of the Solicitor. It may also be advisable to include the full disclosure provision for all non-Federal parties, as a non-Federal party may have entered into such arrangements even if a facilitator is not used. The initial disclosure must be made prior to the appraisal request so that information may be addressed in the appraisal.

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Illustration 4-1

Serial Number:

Name of Exchange:

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Agreement to Initiate a Land Exchange

Purpose and Scope

This non-binding land exchange ATI (Agreement) is entered into for the purpose of documenting the commitments the parties hereto make to evaluate the merits of pursuing a proposal to exchange Federal and non-Federal land or interests therein.

The parties acknowledge that participation in these commitments will have no binding effect on any party to consummate the exchange. Should this Agreement be terminated without consummating an exchange, no party will be required to reimburse or pay damages to any other party associated with participation in the activities identified herein for considering the exchange proposal.

Authority

Authority for this Agreement is under Section 206 of the Act of October 21, 1976, as amended. The consideration of an exchange of Federal and non-Federal land or interests therein must include, among other things, an evaluation of how the exchange will serve the public interest based on a BLM equal value determination, ASD reviewed and approved appraisals, an environmental analysis, and coordination with State and local governments, and/or other affected property and public interests.

Format

This Agreement consists of this Section and Exhibits A and B including the legal and title information for the Federal and non-Federal land, and Exhibit C addressing land exchange processing cost, responsibilities and schedule, attached hereto and made a part hereof.

Amendment and Termination

All amendments to this Agreement must be made in writing by the mutual consent of the parties. The parties jointly agree to share in the responsibilities for amending the Agreement with the frequency and level of detail necessary to support the purposes for which the Agreement has been made.

This Agreement shall be effective for the time-period identified in Exhibit C- Exchange Processing Schedule, provided the commitments and responsibilities as outlined in that exhibit are being diligently pursued¹². Should either party wish to withdraw from the Agreement they may do so by providing the

¹² Alternate wording example - This Agreement shall be effective until the exchange is completed or until either Party chooses to withdraw from the Agreement provided the commitments and responsibilities as outlined in Exhibit C are being diligently pursued.

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other party(s) a written 30-day advance notice of intent to terminate participation.

General Provisions

1. Hazardous Substances: Each party to this Agreement hereby declares that to the best of its knowledge there has been no actual or suspected release, storage, or disposal of hazardous substances on the Federal or non-Federal land involved in the exchange. The BLM will comply with legal requirements necessary to determine if hazardous substances are present on the Federal land and the non-Federal party comply with legal requirements necessary to determine if hazardous substances are present on the non-Federal land involved in the exchange. If hazardous substances are determined to exist on either the Federal or non-Federal land involved in the exchange, the parties may choose to either: (a) conduct further investigation and, if necessary, remediation; (b) remove the land so affected from the exchange proposal; or (c) terminate the Agreement.

2. Right to Enter: Each party to this Agreement hereby grants permission to the other, and their authorized agents, contractors or permittees, to enter upon and physically examine the land described in this Agreement. The conduct of such examination shall be limited to non-surface disturbing activities. Any vehicular travel associated with such conduct will be limited to existing roads. Any examination or entry that exceeds the scope of the above-described conduct will require advance approval from the other party. The grant of permission (does/does not) require the prior notification of the other party.

3. Relocation and Use Termination: Pursuant to 49 CFR 24.101, this Agreement serves as formal notice of the voluntary nature of this exchange and that the non-Federal lands are being acquired by the United States on a voluntary basis. Relocation benefits will not be paid and are not applicable to the exchange parties. The non-Federal party(s) certifies there are no known tenants or occupants of the property and no unrecorded matters that may affect the property.

4. Availability of Information: All documents, reports and other related requirements prepared for both the Federal and non-Federal lands necessary for the evaluation and processing of the land exchange will be made a part of the administrative record and are subject to public availability at the discretion of the Federal party. This includes information which may be exempt from release under the Privacy Act (5 U.S.C. 552 (a)), and information which may qualify for exemption under the Freedom of Information Act (5 U.S.C. 552(b)).

5. Regulatory Deadline Suspension: The parties to this Agreement suspend the deadlines for completion of appraisals pursuant to provisions of 43 CFR 2201.1 (d) and for reaching an agreement on value pursuant to 43 CFR 2201.4(a)(1). In lieu of those deadlines, the Agreement adopts the processing schedule outlined in Exhibit C of this Agreement related to obtaining appraisal reports, completion of appraisal review by the Department of the Interior (Appraisal Services Directorate), acceptance of appraisals by the BLM, and reaching agreement on value between the parties. All such material prepared in relation to this Agreement shall become the property of the BLM and will be considered "pre-decisional working papers" not subject to premature availability prior to reaching an agreement on value.

6. Compensation of Costs: No compensation of costs pursuant to the provisions of 2201.1-3 will be allowed in this exchange.

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Assembled Exchange Provisions

1. Where multiple non-Federal parties are participating, identify the roles and responsibilities each party will have in processing the exchange proposal.
2. Where phased processing is planned, identify the anticipated number and timing of the transactions necessary to complete the exchange process.
3. Identification of the anticipated manner in which title, including requests for direct deeding to the United States and/or for issuance of multiple patents.
4. A description of the strategy for equalizing values in the assembled exchange package.
5. Identify if the establishment of a ledger is anticipated and if and how ledger imbalances will be secured.
6. A provision, if applicable, for estimating separately the value of each property. If included, the provision must also indicate that the Federal land will be valued in a similar manner.

Facilitated Land Exchange Full Disclosure Provision (if applicable) **See IM 2010-123**

~~By entering into this Agreement, the non-Federal party agrees to fully disclose to the authorized officer all contracts, options and other related agreements with landowners represented by the facilitator. The non-Federal party also acknowledges that the BLM and its authorized representatives have the right to inspect the records of the non-Federal party to verify the disclosure. The non-Federal party should be prepared to make these records available within a reasonable period of time upon request, but no later than 14 days after the request. The BLM has the right to exercise this disclosure provision for seven years after the last transaction of the exchange is complete. All confidential business information and all information covered by the Privacy Act will be protected to the extent allowable by Federal law.~~

Optional Provision

1. Equalization of Values: See 43 CFR 2201.6 and address the strategies or priorities the exchange parties will use in adding or deleting lands to equalize values. Adding or deleting land may have a disproportionate effect on value when parcel size, access, proximity, and other land characteristics of the added or deleted lands are not typical of the entire parcel. Obtain written assistance from the ASD review appraiser when considering the use of an equalization of value process.

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Decision and Closing Provisions

Should the consideration of the exchange result in decision by both parties to proceed with consummation of the transaction, the decision and closing processes would be handled as follows:

1. Decision: Upon reaching and documenting an agreement on value based on approved appraisal reports, issue a decision and initiate protest period.
2. Pursuant to 43 CFR 2201.9, title to the Federal and non-Federal land will be transferred simultaneously through escrow procedures and the responsibility for cost associated with the closing are assigned as outlined in Exhibit C. See also 43 CFR 2201(c)(13) & Pg. 16-1

This Agreement to Initiate a Land Exchange will be effective as of the last date shown below.

Federal Party: _____
Authorized Officer, Bureau of Land Management

The Authorized Officer has named the following primary contact for all communication and cooperation related to this Agreement:

_____ Name and Title	_____ Address	_____ Phone	_____ Name and Email
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Non-Federal Party(s): _____
(Title, if applicable)

The non-Federal party has named the following primary contact for all communication and cooperation related to this Agreement:

_____ Name and Title	_____ Address	_____ Phone	_____ Name and Email
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Exhibits:

A and B: Property and Title Information

C: Exchange Processing Schedule and Assignment of Responsibilities

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Exhibit A: Federal Land and Interests to Be Considered for Exchange and Preliminary Title Information

1. Description of the Federal land

- Insert legal description
- Include any reservations and outstanding rights to be conveyed

2. List all reservations and outstanding rights (include water rights and mineral interest)

3. Conveyance would occur with the issuance of a single patent. The BLM will not provide any form of title insurance associated with the conveyance.

4a. A patent would issue with the following reservations:

- Reserving to the United States a right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 845).
- Reserving to the United States (see 1860 manual for inserting the exact patent language for mineral reservations).

4b. A patent would issue subject to the following outstanding rights:

- A right-of-way granted to.....

5. Upon execution of this Agreement, BLM will segregate the above described Federal land from all forms of appropriation under the public land laws and mineral laws for a period of 5 years.

6. Any change in the above-described property or conveyance terms will require immediate notification to the other party and completion of a written amendment to this Agreement.

Exhibit B: Non-Federal Party Land and Interests to Be Considered for Exchange and Preliminary Title Information

1. Description of the non-Federal land:

- Insert legal description
- Include any appurtenant rights to be conveyed, i.e., access, water, timber

2. List all reservations and outstanding rights to be conveyed

3. Conveyance would occur by Warranty Deed in a form acceptable to the United States. A proforma title insurance policy for the above described non-Federal land will be provided on an approved American Land Title Association (ALTA) 09/28/91 form within 30 days of execution of the Agreement.

4. Summary statement of ownership or ability to provide title to the above described land.

5. Any change in the above described property or conveyance terms will require immediate notification of the other party and completion of a written amendment to this Agreement.

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Exhibit C: Exchange Processing Schedule, Cost and Responsibility Assignments

ACTION PLAN	Responsible Party		Cost Estimate		Start Date	Finish Date
	BLM	Non-Federal Party	BLM	Non-Federal Party		
FEASIBILITY AND SCHEDULING PHASE:						
Exchange title and survey information (Includes legal description review) (Land Surveyor Report - 600 DM 5 Standards for Federal Lands Boundary Evidence)	✓	✓				
Request Valuation Analysis	✓					
Prepare feasibility report	✓	✓				
Draft ATI and NOEP	✓	✓				
Develop mailing, consultation list of 3 rd party interests, adjacent landowners, other key constituents	✓	✓				
Prepare draft patent(s) and draft deed(s)	✓	✓				
Prepare appraisal request	✓					
Approve feasibility	✓					
EXCHANGE PROCESSING PHASE:						
Execute ATI	✓	✓				
Publish and mail NOEP	✓	✓				
Conduct consultations with Native American tribes, congressional delegations, state and local government, key constituents	✓	✓				
Environmental Site Assessment (Haz mat)	✓	✓				
Obtain approved appraisals from DOI ASD	✓	✓				
Resource assessment: Cultural/historic	✓	✓				
Resource assessment: T&E, biological, botanical, noxious weeds	✓	✓				
Resource assessment: Timber	✓	✓				
Resource assessment: Wetlands, floodplains, water resources	✓	✓				
Resource assessment: Recreation, Wilderness, Visual	✓	✓				

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ACTION PLAN	Responsible Party		Cost Estimate		Start Date	Finish Date
	BLM	Non-Federal Party	BLM	Non-Federal Party		
Resource assessment: Socio-economic and environmental justice	✓	✓				
Resource assessment: Minerals and mineral potential report for federal land	✓	✓				
NEPA documentation	✓	✓				
Certification of Inspection and Possession, and Preliminary Title Opinion	✓					
Accept appraisals for Agency use	✓					
DECISION PHASE:						
Agreement on value and equalization	✓	✓				
Prepare decision and Notice of Decision	✓					
Publish and mail Notice	✓					
Binding Exchange Agreement (optional)	✓	✓				
Prepare escrow instructions, final patent(s)/ deed(s) and assign closing costs	✓	✓				
CLOSING PHASE:						
Title policy to BLM and deed to escrow Equalization		✓				
Final Title Opinion	✓					
Patent to escrow	✓					
Certificate of Inspection and Possession	✓					
Protest resolution, if applicable	✓					
Closing	✓	✓				
COST ESTIMATE TOTALS						

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Chapter 5 - Establishing the Case File and Preparing the Notice of Exchange Proposal

A. Initial Actions

1. Establishing the Case File. Establish a case file when it is determined that the exchange warrants further study. Depending on local policy, a case file may be established before the feasibility report or after completion and approval of the feasibility report. When a case file is established, the data must be entered in the LR2000 system. See LR2000 lands data standards for required action codes for land exchanges. See IM 2010-121 - Documentation in Land Exchange Case Files
2. Segregating the Federal Land. The regulations at 43 CFR 2201.1-2 provide for segregation of the Federal land included in a land exchange proposal for a period of up to 5 years. Segregation temporarily removes Federal land from appropriation under the public land and mineral laws, subject to valid existing rights. Segregation is a required action code for LR2000. Segregation is effective the date posted to the records, and the date should be the same as the date noted on the LR2000 system, as it initiates the segregation period. Please note that the BLM regulations allow 90 days after the date of location to file notice of a mining claim with BLM. State laws vary, but could also allow similar timeframes. It is advisable to check the records after the 90-day period to ensure there are not any active mining claims that had been located prior to the date of segregation, but not filed with BLM at the time the segregation was noted to the records.

Segregation does not preclude issuance of a right-of-way or other discretionary land use authorization. However, when considering applications for such authorizations attention must be paid to how the authorization would affect the exchange proposal, especially potential effects on the appraisal. It is important to discuss these land use applications with the non-Federal party to determine potential affects on the intended future of the Federal lands.

- a. When to segregate: Federal land included in a land exchange proposal should be segregated as soon as possible to preclude new encumbrances that could hinder completion of the proposed land exchange¹³. In most instances, the BLM would segregate Federal lands prior to release of the Feasibility Report or publication of the NOEP. Field Offices request segregation of the Federal land included in a land exchange proposal by memorandum to the State Office records staff. Ensure that as exchange proposals are being considered, adequate attention is paid to the need to add or delete land from the segregation if the exchange proposal is modified during processing.
- b. When segregation terminates: The segregation will end with any of the following occurrences, whichever comes first:
 - (1) Issuance of the conveyance document (patent or deed) for the Federal land or interests;
 - (2) The end of the segregation period, not more than 5 years; or
 - (3) Publication in the *Federal Register* of an opening order following a decision to remove any or all of the lands from the exchange proposal.

13. Additional information on land exchange segregations can be found in the following Interior Board of Land Appeals Decision: Michael L. Carver, 163 IBLA 77 (September 2004).

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3. Record Requirements. The BLM Field Offices have the primary responsibility for ensuring that the appropriate records are updated in a timely manner. This consists of notations to the master title plats (MTPs), historical indexes (HIs), and all automated information systems. All organizational levels are responsible for and expected to record their actions to the automated systems using current data standards. Official land records (MTPs and HIs) must be noted by the approved method for State Office records. Notations for all public land record systems must be kept current throughout the land exchange process. Notation to the records alerts the BLM specialists and other users of the pending action and the level of segregation. When additional lands are added, a different effective date for the segregation will be established for the added land.

B. The Purpose of the Notice of Exchange Proposal

The BLM must publish a Notice of Exchange Proposal (NOEP) upon entering into an ATI for an exchange.¹⁴

The three purposes of a NOEP are to:

- Advise the public of the opportunity to participate in the NEPA process by inviting comments on the land exchange proposal. The NEPA process will include the identification of the resources and assessment of impacts associated with the proposed land exchange and any alternatives. The NEPA process will be a primary forum for assessing the public interest served by the exchange of lands.
- Notify all authorized users and others who may have interests in or claims against the Federal and non-Federal land. The notice serves to ensure identification of all such interests for proper assessment of title to the properties and to ensure consideration of all affected interests as a part of assessing the effects of the exchange proposal.
- Provide notice to State and local governments, and congressional delegations having jurisdiction over the land in the exchange proposal.

C. Required Information in a NOEP

There are five items identified in 43 CFR 2201.2 that must be included in every NOEP. They are:

1. The identity of all parties involved in the exchange proposal;
2. The complete legal descriptions of the Federal and non-Federal land and interests in land involved in the exchange proposal;

→ 14. Segregation of the Federal land involved in a land exchange proposal should occur as far in advance of the NOEP publication as necessary to ensure the protection of the Federal land from actions under various public land laws. Also, see Chapter 6 for information related to Native American Consultation requirements.

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3. The date and effect of the segregation;
4. An invitation to the public to submit written comments on the proposal and a request for identification of any liens, encumbrances or other claims to the land being considered for exchange; and,
5. The name, title and address of the official who will receive comments and the date by which comments must be received.

D. Additional Information to Consider Including in a NOEP

The following additional information may be considered for inclusion in the NOEP to assist the public in understanding the proposal:

1. The serial number of the case file;
2. For exchanges involving long or complicated land descriptions, you may reference a locally recognized geographic location. It may be helpful to label parcels of land with a name or number to allow for public comment on a specific parcel by reference number rather than by legal description;
3. A description of the purpose of the exchange and the anticipated benefits to the public;
4. A reference to land use plans supporting the exchange and a description of the intended land uses anticipated after the exchange is completed;
5. A description of where the public can obtain more information about the exchange; and,
6. A statement that the land exchange will be completed on an equal fair market value basis based on approved appraisals and a brief description of how the exchange may be equalized.

See Illustration 5-1 for an example format for a NOEP. Check with the State Office lands staff for state-specific samples that may be available.

E. Correcting or Amending a NOEP

A NOEP must be amended or corrected if Federal or non-Federal land or interests in land not previously identified are included in the exchange proposal. The addition of lands to a proposed land exchange or republication of a NOEP may require a Washington Office concurrence review.

Minor corrections of land descriptions do not require an amendment. Differentiate minor corrections from major by assessing if the correction is a small typographical or omission error vs. the addition of a parcel or property based on a change in the exchange proposal. Note the case file when errors are discovered in the NOEP, and indicate whether a corrected NOEP was published.

A NOEP does not have to be amended or corrected when land is deleted from an exchange proposal

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or when completion of the exchange is delayed for an extended period. However, there is no prohibition on updating notices in extended land exchange processes if it would be appropriate in ensuring effective public participation.

F. Combining a NOEP with a Notice of Plan Amendment

Land use plans can be amended at the same time exchange proposals are being processed. Notices, environmental documentation and other procedural steps may be combined consistent with the planning regulations and other guidance to streamline exchange processing and increase the effectiveness of public participation. It should be noted that all public notification requirements for associated actions must be met and this can affect overall scheduling. See Illustration 5-2 for an example of a notice which combines both requirements.

G. NOEP Publication Requirements

The NOEP must be published in newspaper(s) of general circulation in all counties where affected land is located. If portions of the Federal and non-Federal land are located in different counties, the NOEP may have to be published in more than one newspaper. The NOEP must be published once a week for 4 consecutive weeks. The first publication must be proofread to check for errors. Requests for publication services should include obtaining a "certificate of publication" for case file documentation.

Copies of the NOEP must be sent to:

1. All authorized users of the Federal and non-Federal land involved in the exchange, including grazing permittees/lessees, recreation use permittees, right-of-way holders, mineral lessees, and holders of any other authorizations. Notify owners of mineral or other interests in the Federal and non-Federal lands. The title evidence for the non-Federal land should be reviewed to determine the existence of affected parties and outstanding rights to determine notification requirements.

The NOEP may serve as the 2-year grazing notification to authorized grazing permittees in compliance with the grazing regulations at 43 CFR 4110.4-2(b) which state, in part, "When federal lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees must be given two years prior notification . . . before their grazing permit or grazing lease and grazing preference may be canceled . . . (a) permittee or lessee may unconditionally waive the 2-year prior notification"

The NOEP will alert right-of-way holders of the possible change in ownership of the Federal land and provide an opportunity to convert the right-of-way to an easement with the proposed new landowner.

2. Local government and elected officials including the Governor and/or State clearinghouse, local government bodies having planning and zoning jurisdiction over the land, Tribal governments and the U.S. congressional delegation(s) representing the land involved in the exchange proposal.

You may also send the NOEP to other interested parties, including the Resource Advisory Council

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(RAC) or other advisory board, local municipal governments, and adjoining landowners, special interest groups, and those entities on office mailing lists for environmental documents or other information.

The NOEP is normally mailed with a cover letter and map providing additional information on the exchange proposal and further explaining opportunities for participation in the evaluation process. While not required by the regulations, it is suggested that the NOEP be sent via certified mail to ensure there is case file documentation that potentially affected interests were served notice of the proposal and afforded an opportunity to participate in the process. A mailing list should be developed in conjunction with the NOEP to assist in distribution of subsequent notices. The mailing list should be updated throughout land exchange processing to include additional parties expressing an interest in the exchange process.

The NOEP and publication of the NOEP are required LR 2000 actions codes for land exchanges. Update the serial register page with the dates of publication.

H. Public Participation and Analysis of Public Comments

Comments received in response to the publication of the NOEP should be analyzed and considered during land exchange processing. Comments that are not received within the 45-day comment period should also be considered whenever possible. The NOEP is not a decision, and is not subject to protest or appeal.

Field Offices are encouraged to consider a variety of additional public involvement forums such as open houses, public meetings, field tours, posting notices to websites and/or including information on the exchange proposal in NEPA and planning updates to improve public involvement opportunities. Additionally, it may be beneficial to develop a news release or otherwise encourage local newspapers to do a story on the exchange proposal and encourage public participation in the evaluation process.

I. Rejecting/Abandoning Proposals after Publication of a Notice of Exchange Proposal

Occasionally additional information is received as part of processing an exchange that results in the proposal no longer being feasible, or a non-Federal party, for various reasons, may withdraw a proposal for an exchange. When the BLM discontinues processing of a proposal that has passed the feasibility stage and for which an Agreement to Initiate has been signed and a Notice of Exchange Proposal published, certain additional follow up actions are necessary. When proposals that have been noticed are rejected or abandoned:

1. Send a letter to the non-Federal party which documents the decision to abandon processing the exchange and provides the required notification to terminate the Agreement to Initiate;
2. Publish a Notice of Exchange Termination informing the public that processing of the exchange is being discontinued, and restoring the public lands to the operation of the public land laws, as appropriate;

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3. Publish an opening order in the Federal Register, specifying the date and time the lands will be opened; and,
4. Close the case file, including updating the automated records and Master Title Plats/Historical Index.

When exchange processing is abandoned under these circumstances, no appeal is allowed to the decision. See Chapter 9 for additional guidance on decisions and notices.

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Illustration 5-1

Notice of Exchange Proposal Format Example Proposed Exchange of Land

UNITED STATES DEPARTMENT OF THE INTERIOR, Bureau of Land Management, XXXX Field Office, and Address.

Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716). This is an exchange with XXXXXX.

The following described Federal land is being considered for disposal by the United States:

aggregating approximately XXXXX acres.

In exchange, the United States would acquire the following non-Federal land:

aggregating approximately XXXXX acres.

This exchange will be completed on an equal value basis.

Subject to valid existing rights, the Federal land identified above was segregated from appropriation under the public land laws and mineral laws beginning DDMMYY.

More detailed information concerning the proposed exchange may be obtained from XXXXX at XXXXXX Field Office, Address.

Interested parties may submit comments concerning the proposed exchange, including notification of any liens, encumbrances, or other claims relating to the lands being considered for exchange, to XXXXX , XXXXXXXX Field Office Manager at the above address. In order to ensure consideration in the environmental analysis of the proposed exchange, written comments to the Field Office Manager should be postmarked or delivered within 45 days of the date of the first publication of this Notice.

Date
Name
Title

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Illustration 5-2

Combined Plan Amendment/Notice of Exchange Proposal

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Xx-xxx-0x-1430-FM/FO; xx-xx-xxxx]

Proposed Land Exchange; State (serial #)

AGENCY: Bureau of Land Management, (BLM), Interior

ACTION: Notice of Intent to Amend the XXX Resource Management Plan and Notice of Exchange Proposal

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) proposes to amend the XXX Resource Management Plan (RMP) with respect to management of XXX acres of Federal land in XXX County and consider the land as available for disposal by exchange.

DATES: This notice provides for a comment period on two different proposals, one a proposed plan amendment and the other a proposed land exchange.

Pursuant to the regulations at 43 CFR Part 1600, for a period of 60 days from the publication of this notice in the *Federal Register*, interested parties may submit comments and recommendations regarding the proposed plan amendment.

Pursuant to the regulations at 43 CFR Part 2200, for a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may also submit comments concerning the proposed exchange, including notification of any liens, encumbrances, or other claims relating to the lands being considered for exchange.

ADDRESSES: Address written comments on either proposal or requests for further information to: Name, Title, and Address.

For further Information Contact: (Name, Title & phone number)

Supplementary Information: The Bureau of Land Management (BLM) proposes to amend the XXX Resource Management Plan (RMP) with respect to management of following described Federal land in XXX County and consider the land as available for disposal by exchange.

Legal Description

Containing XXX acres, more or less.

Notice is also given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716). The exchange has been proposed by XXXX. All or part of the above described Federal land is being considered for disposal by exchange.

In exchange, the United States would acquire the following described non-Federal land from XXXX:

Legal Description

Containing XXX acres, more or less.

Subject to valid existing rights, the Federal land identified above has been segregated from appropriation under the public land laws and mineral laws beginning DDMMYY.

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Chapter 6 - Resource Analysis and Environmental Documentation

A. Introduction

The extent of resource analysis and documentation required as a part of considering land exchange proposals is guided by the following two regulatory provisions.

First, the regulations under 43 CFR 2200.0-6(h) provide that *“after an Agreement to Initiate an exchange is signed, an environmental analysis shall be conducted by the authorized officer in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500-1508), and the environmental policies and procedures of the Department of the Interior and the Bureau of Land Management. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to Sec. 2201.2 of this part.”*

Second, the regulations under 43 CFR 2201.7-1 provide that a decision on a land exchange proposal cannot be made until *“completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations.”*

B. Specific Reports Required for Land Exchanges

The preliminary scoping should provide a framework for both the identification and scheduling of the data collection and analysis efforts. The information will lead to a determination of whether the exchange proposal is in the public interest, of equal value, and can be conducted in compliance with NEPA and all other laws and regulations.

The following lists provide an overview of the reports and studies that are (1) typically required in exchange processing, and (2) potentially required, depending on the resources present. The second list is not intended to be all inclusive nor would each of these reports be necessary for considering all land exchange proposals. The scoping, public involvement and NEPA process requirements should be used as guides for determining which reports will be necessary to consider proposals. Additional detailed information on the requirements associated with these reports and studies is contained in Illustration 6-1.

For some properties, especially those potentially influenced by timber, minerals, or water rights, additional expertise will be necessary for the appraisals, and BLM will play a major role in ensuring this expertise is available and appropriate. This may include BLM staff involvement in preparation of the technical reports, or oversight, review and approval of reports and material provided by third parties. Close coordination with the DOI ASD appraiser is critical.

1. Resource Reports and Studies Typically Required:

- Mineral reports;
- Environmental Site Assessments (contaminant surveys);

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- Cultural and historic property reports;
- Native American consultation;
- ANILCA Section 810 Subsistence Impact Analysis (Alaska only);
- Wildlife and botanical reports, for listed or sensitive species;
- Outstanding third party rights and reserved interests (generally described in preliminary title reports); and
- Appraisal reports (covered in Chapters 7 and 8).

2. Resource Reports and Studies Potentially Necessary:

- Water resources report;
- Wetlands and floodplains;
- Biological and botanical inventories;
- Forest resources report;
- Access;
- Engineering including assessment of condition and future management cost associated with any structures, facilities or improvements located on lands being acquired by BLM;
- Cadastral Survey (see Chapter 2 for further information on cadastral survey needs identified in the feasibility report);
- Range;
- Noxious weeds;
- Paleontology;
- Recreation/wilderness/visual resource management;
- Wild horse and burros; and
- Socio-economic reports.

C. Coordination and Sequencing the Completion of Reports and Studies

When assessing the available options for scheduling the studies and reports, consideration should be given to sequencing activities based on cost, time frames for completion, and how the data may relate to the viability of the exchange proposal or to the need for conducting additional coordination, consultation or analysis. For example, the early involvement of cadastral survey (office survey examination and field inspections) provides an opportunity to identify boundary or land survey issues needing attention prior to involvement of resource specialist. In addition, environmental site assessments, cultural resource surveys and mineral reports are generally conducted first since the information from those reports could significantly affect consideration of the land exchange proposal.

Where there is a potential for listed or sensitive species, biological and botanical studies may also need to be conducted early in the process, particularly when there is a limited window for conducting field surveys to appropriately detect the presence of a species or habitat. Limited field seasons for conducting surveys may have to be considered in the timing of exchange processing. Additionally, where there is a need for consultation with the U.S. Fish and Wildlife Service, the schedule for the collection of resource information needs to allow time for conducting the consultation, and to consider the input as a part of the environmental documentation process.

Early collection of some of the data may be essential in completing the appraisal process. For

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example, determining the extent of the mineral interests, timber interest, water rights, and access rights to be either conveyed or reserved in the Federal or the non-Federal land is essential information for the appraisal process, as well as the NEPA documentation. In situations where the responsibility of the clean-up of contamination must be addressed the costs may have an effect on value. In addition, water, timber, minerals and access are considered an interest in property that may be exchanged. As such, the property interests to be included or excluded in the exchange proposal need to be fully addressed in the Notice of Exchange Proposal and subsequent documentation and analysis. Should studies indicate a change in anticipated disposition of these property interests, a revised or amended Notice of Exchange Proposal may be necessary. If a plan amendment is involved a revised NOI may also be necessary.

Staff and contractors should be encouraged to closely coordinate all efforts related to field inventories to expand the capability for detecting the presence of resources or resource conditions that may warrant revising the plans for completing the necessary suite of studies. On a case-by-case basis, it may be necessary for some inventory work to be undertaken at the feasibility stage.

The manager and the staff member(s) assigned to processing the land exchange proposal play an important role in orchestrating and coordinating the numerous individuals and time frames involved in conducting the data collection and analysis. The land exchange processing schedule included in the ATI is a key tool in keeping these tasks moving forward in a synchronized fashion, especially as some of the work efforts are under the control of the BLM and some under the control of the non-Federal party. Amending the time schedule in the ATI assists in both tracking work accomplishments and communicating the progress, and should be done as needed.

D. NEPA Compliance Requirements

The BLM Manual 1790, BLM Handbook H-1790-1 and supplemental instruction memoranda provide guidance on NEPA compliance requirements. NEPA documentation must be sufficient to address the range of issues and environmental effects associated with the exchange proposal and specific enough to support a public interest determination. Environmental documents may be prepared internally, by other Federal agencies or by private consultants with review by the BLM. Proposed land exchanges must be consistent with the existing Resource Management Plan or Management Framework Plan. The environmental document prepared for the proposed exchange is tiered to these existing plans, and any subsidiary activity/implementation plan that may be applicable. In instances where the proposed exchange is not consistent with the existing RMP or MFP, the BLM must complete a plan amendment.

The description of the proposed action must include the likely foreseeable future use of both the Federal and non-Federal land. For the non-Federal land being acquired, this could include actions such as withdrawal, development of recreation facilities, and establishment of special rules for the use and occupancy of the acquired land, i.e. camping or OHV restrictions. If a proposed land exchange requires a plan amendment, the environmental document should address the plan amendment, the exchange proposal and the anticipated management prescriptions to be applied if the non-Federal land is acquired. Refer to the planning regulations (43 CFR Part 1600) and other guidance for information on amendments of land use plans.

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The analysis should consider reasonable alternatives to the proposed action. Where there are multiple exchange proposals for the same Federal land, consider the public interests served by each proposal in the environmental document. This consideration will allow the BLM to determine the alternative that best serves the public interest. Where the non-Federal party has indicated an unwillingness to consider other acquisition or disposal alternatives, the document should represent that such alternatives were identified but not further considered.

All affected resources should be considered, including but not limited to, cultural resources, recreation opportunities, wildlife, botanical resources, and minerals. Since both disposal and acquisition actions are being evaluated, the analysis should also consider the social and economic impacts of the exchange, including loss or gain to the tax base, payment in lieu of taxes, other tax impacts, and impacts to outstanding third party interests.

E. Mitigating Impacts with Reservations or Deed Restrictions

The regulations under 43 CFR 2200.0-6(i) provide that the public interest may be protected through the use of reserved rights or interests in the Federal land. In general, mitigation in the form of deed restrictions on Federal land conveyed into non-Federal ownership should only be used where required by law¹⁵ or executive order, clearly supported by the environmental documentation and closely coordinated with the Field or Regional Solicitor. It is the BLM's policy to limit reservations to those supported by the environmental documentation, public benefit determination process and fully considered in the appraisal process. Environmental mitigation in the form of reserved Federal rights or interests should be evaluated for appropriateness as part of analysis of alternatives in the environmental documentation.

Mitigation in the form of reserved rights or interests will result in one or more of the following situations:

- Perpetual responsibility for the administration of uses on non-Federal land and administration of reserved Federal interest;
- Enforcement obligations and complications; and
- Potential reduction in the appraised value of the Federal estate.

¹⁵ Under certain situations where contamination, storage or release of hazardous substances has occurred specific language and/or covenants are required by law (see BLM Manuals 2101-4 and 2101-5).

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Illustration 6-1 Further Information on Reports and Studies for Land Exchanges

Staffs responsible for inventory, assessment, and report preparation for these resources generally have program-specific guidance containing applicable standards for completing the reports. When considering the use of outside contract sources for conducting the work, ensure that appropriate levels of communication and coordination occur between consultants and program coordinators so that contractors are aware of assessment and reporting standards and can prepare reports in a manner that will facilitate the BLM review and approval.

Cultural and Historic Property Reports

The regulations implementing Section 106 of the National Historic Preservation Act of 1966 (36 CFR 800) require Federal agencies to consider the effects of Federal actions on sites eligible for the National Register of Historic Places and to consult with the State Historic Preservation Officer (SHPO).

Programmatic agreements and consultation with SHPO determine inventory needs and methods for considering land exchange proposals. Existing data inventories and/or sampling field inventories of both the Federal and non-Federal land may show that losses and gains would balance, or that the Federal government would benefit by bringing high value historic resources under Federal jurisdiction. When cultural or historic properties are coming under Federal ownership, the consultation process may assist in assessing management needs for the resources to be acquired.

Native American Consultation

The BLM must observe Native American consultation requirements. The BLM uses its consultation record as the basis for demonstrating that a reasonable and good faith effort was made to obtain and consider appropriate Native American input. Refer to the BLM Handbook H-8160-1 for procedural guidance on Native American consultation and coordination. Consultation protocols vary but generally the process is initiated early in the exchange proposal consideration (see Chapter 2).

Wildlife and Botanical Surveys and Reports for Listed and Sensitive Species

Section 7 of the Endangered Species Act requires consultation with the U.S. Fish and Wildlife Service (Service) if an exchange proposal may affect a listed species or habitat. Formal consultation may take up to 180 days, after which the Service will issue a biological opinion. If there is any question, informal consultation should begin immediately. The informal consultation process will help identify the extent to which Federal and non-Federal land may need to be inventoried to allow the analysis of all beneficial and adverse impacts of an exchange proposal.

Outstanding Third Party Rights and Reserved Interests

All outstanding third party interests and reserved interests, rights, uses, and facilities on both Federal and non-Federal land must be identified. The environmental documentation must properly consider the

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impacts to such interests as a part of analyzing the exchange proposal. Consideration needs to be given to the identification of uses noted to the Master Title Plats, as well as other authorized uses such as grazing permits/leases, special recreation use permits, and mineral use authorizations. The decision document for an exchange proposal must specifically identify how such interests and rights will be handled in the conveyance (see Chapter 9).

All existing use authorizations must be reviewed to determine if they continue to be necessary. The BLM Right-of-Way Management Manual 2801 provides guidance on making these determinations for rights-of-way at 2801.62.

Forest Resources

In situations where commercial timber resources exist, arrangements need to be made for the timber to be cruised and considered in the valuation process. This may require special arrangements with the ASD for additional appraisal expertise. As timber values have a high degree of market fluctuation it is important to discuss with the ASD how the values will be kept current during the time frame associated with land exchange processing. All of these issues should be addressed as part of the valuation analysis process for exchange proposals.

If either the Federal or non-Federal lands are to become part of a timber management, unit it may be appropriate to have the report forecast anticipated forest management practices so that information can be considered in the environmental documentation.

Access

Evaluate the need to reserve public access, easements, or other access rights on the Federal land. This is critical information that the ASD appraisal staff needs to arrive at a market value opinion. Access, or lack thereof, may also be an important factor to address as part of considering the merits of the resource values and public benefits.

Engineering Reports

When the non-Federal land to be acquired in an exchange contains infrastructure and/or facilities, an engineering and business analysis must be prepared addressing the condition of and maintenance costs associated with the improvements. Particular attention must be paid to the suitability of the improvements for public use and any associated risk or liability. Any facility with occupancy potential should receive an engineering inspection to address structural conditions and local code compliance. See BLM 1530 Real Property Management Manual and consult with State Office Engineering and Property Management staff.

Wetlands and Floodplains

Executive Order 11988 requires that conveyances of Federal land within a floodplain must be subject to local land use restrictions. Executive Order 11990 requires Federal agencies to minimize the destruction, loss or degradation of wetlands. Consult your riparian/wetlands specialist, mineral specialist, hydrologist, earth scientist, wildlife biologist or other resource specialist for help in determining if the lands are

See FEMA implementing guidelines dated 10/2/2015.

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located in floodplains or contain wetlands attributes. In addition, the Federal Emergency Management Agency (FEMA) prepares flood insurance rate maps that may help determine if the Federal land lie within a floodplain. Refer to the BLM Handbook H-1860-1 for appropriate patent document restrictions.

Environmental Site Assessments

Contaminant inventories and reports must be prepared for both Federal and non-Federal land and the results incorporated into the environmental process. The reports disclose if any contaminants occur on the lands, estimate the potential costs for cleanup, and determine potential liability to the parties of the exchange. These reports establish baseline information in the event of future actions regarding the BLM's liability. Information from the reports may lead to a decision to abandon or modify the exchange proposal. The need for indemnification language for the Federal land should be considered in all land exchanges.

The Department of the Interior has adapted the American Society for Testing and Materials (ASTM) standards for environmental site assessments (ESAs) (see guidance in the 602 Departmental Manual and the BLM H-2101 Handbook. The level of analysis and documentation will depend on what the initial inspection discovers, past land uses, and the proximity of known contaminated sites. Unless contamination is suspected, a trained and qualified resource specialist may complete a Preliminary Analysis or Initial Assessment level report. Consult with a hazardous materials coordinator if any contamination is suspected on the Federal or non-Federal land.

The BLM is responsible for securing contaminant surveys on the Federal lands. Phase II and III surveys may be supplemented with information from private contractors. Reports on the non-Federal land should be updated when the Certificate of Inspection and Possession is completed if more than 6 months have elapsed since the first inspection. Departmental policy requires that an Environmental Site Assessment be updated after one year.

Conveyances of contaminated Federal lands are subject to the provisions of 42 U.S.C. Section 9620 and the administrative record for the Federal land must reflect the BLM inventory for any known release or storage of contaminants. There are specific land exchange documentation regulatory requirements for addressing hazardous substances. Refer to 43 CFR 2200.0-6 (j) for policy requirements, 43 CFR 2201.1-1(c) (8) for ATI requirements and 2201.7-2 (a) (2) for binding exchange agreement requirements for hazardous substances on non-Federal land. If the non-Federal party is the potentially responsible party for contamination on Federal land, certain legal requirements must be followed to clean-up the site. If the non-Federal party is not the responsible for the contamination but is willing to assume responsibility and cost for remediation under a negotiated agreement, the Solicitor is required to be involved in reviewing the agreement.

Mineral Reports

Information from the mineral report is essential for requesting the appraisal from the ASD. The mineral specialist and ASD appraiser should work closely to ensure that the BLM receives fair market value for the surface and mineral estate, as required by FLPMA. Refer to BLM Manual Sections 3031, 3060, 3070, and 3620 for guidance on mineral reports and valuations.

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This report determines if the Federal land has mineral potential, evaluates surface use interference with potential development of the mineral estate and makes recommendations to management regarding disposal or retention of the Federal mineral estate. However, neither the FLPMA nor the land exchange regulations require the reservation of Federal mineral interest in land exchange transactions. The mineral report prepared for a proposed land exchange is advisory in nature only and the authorized officer should consider the benefits of including the mineral estate value in the land exchange transaction. The mineral report should answer questions generated by the site-specific conditions of the lands involved in an exchange proposal and should contain a level of detail consistent with the resources involved. Working closely with the realty and ASD appraisal staff, the mineral specialist prepares the mineral report using guidance in the BLM Manuals 3031 and 3060. The mineral specialist may be required to provide additional information to the appraiser to assist in the appraisal report.

A mineral report may not be required for non-Federal land if the landowner waives any potential mineral values, which should be documented in the case file, or if there is no reservation of the mineral estate that would affect surface management by the Federal government. Consideration should also be given to withdrawal needs as part of evaluating minerals. If a mineralized parcel is part of the non-Federal land, the BLM must gather the information to determine how the land can be managed in the future. Outstanding rights should also be assessed to help determine the extent of evaluation necessary on the non-Federal lands. Exchanges involving only the mineral estate require reports on both the Federal and non-Federal land.

Mineral reports may be prepared by qualified BLM mineral specialists, qualified mineral specialists from other agencies, or qualified private (third party) mineral specialists. If the BLM contracts for mineral reports, they must be selected using appropriate internal procedures and standards for contracting. Geologic and financial information may be considered confidential in accordance with the BLM Manual 1278 (1278.32D). The level of detail in the mineral report should be suitable for the potential values and complexity of the minerals involved. If the property is an economically viable mineral property, early coordination between the minerals specialist and the appraiser is required. A mineral report prepared to manual standards is unlikely to contain sufficient information for ASD valuation purposes. At a minimum, quantity and quality for the reserves will be required, and in some instances, mining engineering type information may be necessary. The BLM must review and approve reports prepared by non-BLM mineral specialists, including those from other Federal agencies.

Mining claim records must be reviewed. If claims were not properly located or assessment filings have lapsed, the State Office should issue decisions declaring the claims null and void or abandoned. The BLM considers the exchange of lands encumbered by mining claims on a case by case basis (see mineral policy contained in Chapter 1.G.4). As a part of evaluating a land exchange involving mining claims, the following items must be considered:

- The viability of a formal challenge to the third-party claims as part of the early analysis of the exchange proposal.
- Consultation with the Regional or Field Solicitor.
- The mining claimant must receive a copy of the Notice of Exchange Proposal.

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- The prospective patentee must be willing to accept title subject to the mining claims.

Water Rights/Resources

Identification of water rights and consideration of how they will be handled in an exchange must begin at the earliest possible point in the process of considering a land exchange proposal. Being able to identify what water rights will be transferred or reserved in both the Federal and non-Federal portions of the exchange is essential to the accuracy of the valuation, notification, environmental documentation, public interest determination, and decision steps of the land exchange process. Resolution of all water-related issues is always important particularly when the BLM acquires lands specifically for their wetland or riparian values. Investigating water rights takes time and may require specialized expertise and legal consultation, research, and/or field investigations. Without water rights for the acquired lands, the BLM may have to purchase water rights or apply for more junior rights on its own.

If water rights are involved in the transaction, early consultation with your BLM water rights specialist and the ASD appraisal staff is necessary to ensure the availability of specific expertise to meet processing schedules. Water laws and practices are extremely localized, and value implications are usually significant. Use extreme caution when considering acquisition of water rights. Secure local professional expertise well versed in the entire spectrum of water laws and practices in the area. Because water is a State jurisdictional issue, early contact with the appropriate state agency dealing with water rights is essential. With the exception of federal reserved rights, it is the BLM's policy that water rights necessary for Bureau programs and projects be secured pursuant to the applicable State statutory and administrative procedures.

A water right is a valuable property right that must be managed in a way that will ensure it will not be lost. Water rights obtained under State law, whether appropriated, acquired by assignment of a deed to land, or acquired by separate purchase or exchange of water rights, may be subject to loss if not exercised in accordance with State water laws. Because non-use is the primary reason for losing a right, the use of the right is the best way to protect it.

(1) Identification of Water Rights on the Federal and Non-Federal Land

- Obtain a set of legal descriptions for the Federal and non-Federal lands involved.
- Identify all developed and undeveloped waters on Federal and non-Federal lands.
- For the non-Federal lands, obtain a list of appurtenant water rights. Have the non-Federal land owners clearly identify which water rights will transfer to the BLM, and at what stage those water rights are in (i.e., application, permit, certificate, vested, etc.). In addition, record the priority date and the authorized amount, season, period of use, and purpose of use for each water right to the U.S. would acquire.
- Identify whether any partial assignment /acquisition of water rights will occur. Sometimes, not all points of diversion and/or places of use will be transferred to the BLM. If a partial acquisition will occur, negotiate an equitable split (for example, identify the amount of irrigated acreage each will own after the exchange). Often, changes in the type of use allowed for a water right will initiate a review by the state water authorities, resulting in a change (usually a reduction) in the amount of water that can be transferred. A full understanding of these legal intricacies is required as the exchange is analyzed and the valuation problem formulated. Consult with the DOI ASD

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review appraiser, and anticipate the need for external, local expertise.

- Identify any developed waters on the Federal and non-Federal lands involved that do not have water rights.
- Obtain logs for any wells on non-Federal lands.
- Review a copy of appraisals as soon as they are complete. These appraisals typically identify irrigated acreage and water sources for various uses.
- If the BLM is acquiring land for another Federal agency as part of a three-way exchange, contact that agency's water rights coordinator and get them involved.
- Determine whether there are any assessment fees for water rights the BLM would acquire (for example, some irrigation districts charge a fee for water usage).
- Obtain a list of water rights on all the properties involved from the State agency responsible for water resources. Compare this list with the ones developed by the non-BLM party and investigate discrepancies.
- Determine whether any of the Federal or non-Federal lands are in a municipal watershed, wellhead protection area, or are located in a watershed closed to further appropriation.

(2) Identification of Any Reserved Water Rights on Federal Lands

Federal reserved water rights cannot be transferred out of the BLM's ownership because, by law, Federal reserved water rights can only exist on lands owned by the Federal government. Therefore, if a Federal reserved water right exists on land transferred out of the BLM's ownership, the new landowner must be advised that the existing water right will no longer be in effect.

The most common and one of the more important reserved water rights for the BLM is for public water holes and springs (Public Water Reserves). Many of these Public Water Reserves have not been registered with the State, nor do they show up on a Mater Title Plat as a withdrawal. It is important that the District/Field Office/State Office water rights coordinator determine whether potential or existing Public Water Reserves occur on the Federal lands to be exchanged.

(3) Establish Title/Ownership

Determine whether all water rights to be transferred to the BLM are in the non-Federal party's name. If a third party ownership is involved, ensure title conveyance to the BLM or to a non-Federal exchange party prior to the exchange, for subsequent conveyance to the BLM. Obtain hard copies of applications, certificates, permits, proofs of appropriation, etc. for water rights on non-Federal lands to be transferred to the BLM. Obtain a copy of the current chain of title for water rights being transferred to the BLM. Some states will not recognize new owners of water rights if there are deficiencies or conflicts in the chain of title.

(4) Field Verification

Properties to be acquired by the BLM should always be field checked to ensure that:

- each water right is being exercised according to the provisions of State law;
- the water right is not subject to a declaration of forfeiture or abandonment by the State under

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provisions of State law due to nonuse, unauthorized changes in type of use, place of diversion or use, or other reasons; and

- the water right(s) will satisfactorily serve the present and future foreseeable needs of the BLM.

The field inspection also serves to identify water sources which have not appeared in official water rights lists or on maps; inaccurate legal descriptions for the place of use, point of diversion, or delivery systems; water delivery and control system repair needs; and management options for use of the existing water rights.

(5) Evaluation/Case Processing

Include a description of the water rights to be considered in the exchange proposal in all relevant land exchange evaluation process steps. This would include addressing the water rights as a part of the property interest at a minimum in the feasibility report, ATI, NOEP, NEPA document, decision and Notice of Decision. Address in the evaluation process, as necessary, any management costs or responsibilities that would be associated with acquisition of the water rights.

(6) Conveyance Documents and Filing

All water rights issues must be resolved before the closing. The non-Federal parties will have little incentive to work with the BLM on water rights issues after the closing. All water rights to be transferred should be specifically listed in the final deeds consistent with state requirements. Even though the law in many states assumes that all appurtenant water rights are automatically transferred with changes in ownership, a specific list will eliminate any doubt and future questions about ownership.

All parties should be provided with the documentation for the water rights each party is acquiring. This documentation will include (but is not limited to) applications, permits, proofs of appropriation, certificates, and transfer documents. Attach a copy of the final chain of title to each documentation package. If not already done, have all parties fill out the necessary paperwork for transferring ownership of water rights. It may be a "Report of Conveyance" form or similar type of document that must be signed and submitted to the State. Determine who will pay any recording fees, if they are required. If existing water uses on the land acquired by the BLM need to be changed or amendments are needed to existing water rights paperwork, file the necessary paperwork with the State, along with payment of any fees.

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Chapter 7 – Land Exchange Valuation Analysis, Appraisal and Equalization

A. Introduction:

One of the more challenging aspects of the land exchange process is developing an exchange proposal where the appraised value of the Federal and non-Federal land are equal or within the 25 percent cash equalization range. The equalization challenge is complicated by the difficulty of adding or dropping acres once values are determined without disturbing the package of lands desired for acquisition or disposal, the size-to-value relationship in the appraisal, and the capability or reluctance of either party in an exchange to make an equalization payment. Given the complexities of achieving equal value land exchanges, it is essential to develop and maintain constructive discussions regarding the valuation and equalization process throughout the land exchange process.

For ease of reference much of the material contained in this chapter has been consolidated from other chapters in this Handbook, referencing the necessary communication, coordination and documentation between realty staff, ASD appraisers, managers and non-Federal exchange parties in exchange processing. (See Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)

B. Equal Value Exchange Discussions

Non-Federal parties are often unaware of appraisal requirements and processes, such as equal value requirements, Federal appraisal standards and review requirements, public disclosure, and numerous other issues that may bear on the outcome of the appraisal.

Early communications with non-Federal parties should stress:

- Exchanges are not completed on an acre for acre basis.
- The BLM completes land exchanges on an **equal value** basis with differences in value between the Federal and non-Federal lands equalized by either the addition or subtraction of lands or by a cash payment. Cash payments may not exceed 25 per cent of the value of the Federal lands involved in the land exchange.
- The Department of the Interior, Appraisal Services Directorate (ASD) is responsible for the appraisal function within the Department of Interior. The BLM obtains appraisal services from the ASD by entering requests into their Appraisal Request Review, and Tracking System (ARRTS). The ASD is responsible for managing the entire appraisal process regardless of whether BLM or the non-Federal party pays for the appraisal. Following the completion of the appraisal review by ASD the approved appraisal can be provided to the non-Federal parties to the exchange.
- Since the ASD is responsible for ensuring that appraisal reports used by the Department of Interior client agencies comply with Federal standards, only appraisals procured with full ASD involvement are valid.

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- Where a stipulation to value the ownerships separately is included in the ATI for an assembled land exchange, it must also indicate that the Federal land will be valued in a similar manner. The options and alternatives for valuation of the Federal and non-Federal land as a whole, separately, or some combination thereof must be carefully and thoroughly discussed as a part of conducting the valuation analysis process with the ASD. The BLM must ensure that the structuring of the land exchange or the method of valuation does not adversely affect the values of the Federal and non-Federal land. The BLM must also make it clear to all parties that we do not convey Federal land in land exchanges at liquidation, wholesale or other similar form of discounted value.
- To expedite the appraisal process, all parties must provide detailed information to the appraisers. Examples of information that needs to be provided include: survey data, title documents, contaminant survey information, an assessment of associated minerals, access, timber, water right interests, etc., being considered for transfer or to be reserved, identification of any easements or leaseholds to be reserved in the conveyance, third party interests, planning and zoning, and general information related to the reasonable foreseeable development scenarios for the lands. Delays in getting this information could affect the appraisal schedule or appraisal outcome. See the ASD review appraiser and ARRTS system for mandatory information needed to initiate an appraisal or valuation analysis request. The valuation analysis process conducted as part of developing the feasibility report will assist in determining the extent of the information necessary, appropriate timing, and sources of the data.
- Parties to the land exchange must adopt a full disclosure stance regarding relevant market information under their control that may be useful in establishing sound market value estimates for the properties. This includes prior sales of the property, or known similar property, offers to buy or sell the property or known similar property. Parties should avoid speculating on values. Speculation can generate unreasonable expectations and complicates reaching an agreement on value. The intent of the full disclosure requirement is for existing agreements between non-Federal parties regarding conveyance of Federal and non-Federal lands to be considered as part of the appraisal.
- FLPMA provides the flexibility of up to a 25 percent difference in the value of the Federal and non-Federal land (based upon the Federal land value) by allowing for equalization payments. However, FLPMA also requires that the BLM minimize the use of cash equalization.

Land exchanges can be successful when all parties to the transaction trust each other and act in good faith. There is no other place in the exchange process where sensitivities about equitable treatment are greater than in the valuation process. Setting the stage early for developing an understanding of valuation processes, and establishing and maintaining communications aimed at productive and professional dialogue related to property valuation is essential to the land exchange process.

C. Services the Appraisal Services Directorate Can Provide

The ASD appraisal staff can provide a wide range of consulting and advisory services as well as completing specific appraisal assignments. Services include consultations for feasibility determinations, preliminary value estimates, complete appraisal reports, appraisal cost estimates,

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delivery dates for valuation products, parcel configuration advice, highest and best use analysis and market analysis.

D. The Valuation Analysis Process

The purpose of valuation analysis is to provide advice to management and staff in considering the economic and business implications of land exchange proposals and alternatives. The valuation analysis process should begin prior to developing the exchange feasibility report. Early involvement of the ASD helps ensure informed consideration regarding the feasibility of exchange proposals. Alternative land exchange configurations and timing options can be discussed as part of valuation analysis, and the potential complexity and controversy can be assessed to estimate the time and cost of obtaining appraisal products. Relying upon the ASD and assigned contractors makes possible the development of exchange proposals that are likely to result in an equal value exchange.

When requesting an appraisal from the ASD you will be using the Appraisal Request and Review Tracking System (ARRTS). The ARRTS provides a uniform internet based process for making appraisal requests. In addition, it is a process for forwarding requests for approval and assignment, and a mechanism for tracking and reporting on appraisal projects. Information on using the ARRTS is available on line and assistance with requesting appraisal services is available from the ASD.

A valuation analysis should include the following:

1. Arrangements for obtaining an appraisal, identification of qualified and available appraisers, applicable appraisal standards, a tentative schedule and costs, and program funding.
2. Effects on value of the proposed configuration, i.e., size, land pattern, relation to infrastructure, parcel grouping, etc.
3. Alternatives that reflect sound business practices and the equitable treatment of both the Federal and non-Federal land (see Chapter 11 for assembled exchange valuation requirements).
4. A summary or sampling of area sales information.
5. An analysis of the development potential and when the properties might be in demand for that use.
6. Observation of any apparent curable deficiencies in the properties along with an estimated cost-to-cure. Examples may include no legal access, legal encumbrances, zoning or other restrictions, hazardous materials clean up, etc.
7. A discussion addressing the value impacts of the proposed exchanges on adjoining or related properties, especially remaining public lands. It may address whether the proposed exchange would restrict access or other aspects of remaining public lands, or whether an easement might be reserved, or other actions taken, to protect the remaining public lands.
8. A discussion addressing the value implications of known or anticipated off-site actions, for

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example: developing infrastructure or other improvements or area features, impending or anticipated development of other area properties that may change the nature of the subject area, changes in zoning or other legal aspects of the property/area, etc.

9. The effect of any mineral reservations and future mineral development.
10. Discussion of the alternatives for equalization of values and the effects adding or eliminating lands would have on overall values.
11. When you anticipate disagreement, and/or when the property is quite unusual, the responsible BLM and ASD staff should consider whether the appraisal process has adequate supporting input (sales data, income and expense information, engineering, etc.) for the types of property involved. In addition, the ASD can help the BLM assess whether an appraisal is the appropriate valuation mechanism for the action.

In order to improve the quality and reliability of market value opinions, it may be necessary for the ASD review appraiser to arrange for special services early in the appraisal process. This is particularly true in high profile, controversial cases or where disagreements regarding appraisal assumptions that affect value are anticipated. Services may include second appraisals, contract reviews, or engineering and planning studies. Other services may involve soils, slope, land-use, planning, land survey consultations, market sale, highest and best use analysis, mineral reports, timber cruises, legal and title opinions. Realty specialists, managers, and ASD review appraisers should jointly address the advisability, time, cost, and benefits of such additional services as a part of the valuation analysis process.

E. Requesting a Preliminary Value Estimate

The BLM realty specialist can request preliminary value estimates on request through ARRTS. These estimates are preliminary to obtaining a full (complete) appraisal report and may be needed to assist in determining the feasibility of an exchange. A preliminary value estimate may be less reliable than a thoroughly documented complete appraisal, and may contain restrictions regarding its intended use and users. The appraiser may express preliminary value estimates as a range of values and include a likely point value. Discuss the need for this type of service in the valuation analysis process.

F. Requesting an Appraisal

The BLM is responsible for requesting land exchange appraisals from the ASD in a timely manner. All such requests must be entered into ARRTS and specify the purpose, function and intended users of the appraisal. In addition, appraisal request should include information concerning the presence of hazardous substances. It may be appropriate to invite the non-Federal parties to provide any substantive information they believe is relevant to the appraisal for inclusion with the appraisal request. The information must be factual. If the proponent has been involved and allowed to submit such information during the appraisal process, it may help reduce disputes over value.

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Some of the information needed with your appraisal request for land exchanges includes¹⁶:

1. Due dates. This should be coordinated with the ASD review appraiser because of the extensive documentation requirements, complex field research efforts, and possible contracting needs for some appraisal assignments.
2. Case file number.
3. Name, address and telephone number of the owner or non-Federal party.
4. A precise legal description by which the property would be conveyed, and include the following:
 - a. Maps/aerial photos showing boundaries features, ownership patterns and access;
 - b. Preliminary title reports for non-Federal land and equivalent information for Federal land.
 - c. Descriptions of all improvements and whether they will remain or be removed before conveyance.
 - d. If a "before and after" analysis of a larger property is required, a legal description of the entire ownership is also required by the UASFLA.
5. Clearly state what property or estate rights are involved, e.g., fee simple, surface estate, mineral estate, water rights, reservations, appurtenant easements, reservations, fixtures and personal property. Describe any unusual or burdensome terms, conditions or stipulations that exist or may be imposed later in the exchange. Appraisals must consider the value of all rights and interests being conveyed, including mineral and timber interests, and those being reserved.
6. Other information such as:
 - a. Water rights abstract.
 - b. Preliminary determination of mineral potential. If initial indications are that the property is potentially valuable for minerals, preparation of the mineral report must be closely coordinated with the appraiser.
 - c. Information on any recent transactions or other market information involving properties to be appraised, e.g., sales, listings, leases, options, easements, and exchange agreements. Exchanges are conducted based on full disclosure between the BLM and the non-Federal owner. If a landowner has received offers to purchase the property, has listed the subject property for sale or has committed to sell all or parts of it, or has any other information that bears on market value, it must be disclosed.
 - d. The name of the BLM employee that has been designated as the point of contact to enable the

¹⁶ Reconcile with the data entry requirements of ARRTS.

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appraiser to gain additional information or discuss problems encountered.

The appraiser must contact the landowner for an inspection of the non-Federal land. The BLM realty staff should make the landowner or occupant aware that appraisals are underway and that they may be contacted, especially when the exchange involves third party facilitator option agreements.

G. The ASD Appraisal Process

There are four steps in the appraisal process: requesting an appraisal, engaging or assigning the appraiser, preparing the appraisal and completing the appraisal review. It is important to understand each in order to properly identify the complete costs and time frames. Below is a brief explanation of each of the four steps:

1. Requesting the Appraisal - Complete and accurate appraisal requests are imperative to the appraisal process. The designated ARRTS Agency Approver (BLM realty specialist, manager or program lead) is responsible for requesting appraisals. To ensure adequate tracking of appraisal assignments the following ARRTS protocol applies to appraisal requests for land exchanges. For traditional two-party land exchanges, each side of the exchange shall have a separate appraisal request. For assembled land exchanges,¹⁷ When the ATI stipulates that, each non-Federal property optioned or acquired from multiple ownerships for purposes of exchange are to be estimated separately each such property is required to have its own appraisal request. On the Federal side, each property, conveyance or grouping as stipulated in the ATI must also have its own appraisal request. If the ATI does not stipulate any specific arrangement, then all Federal parcels may be included in a single appraisal request.
2. Engaging or Assigning the Appraisal - After receiving and accepting the appraisal requests, ASD will first assign a qualified Review Appraiser. It is this person's responsibility to write or finalize the scope of work for the assignment, and then either assign the case to a staff appraiser or engage a contract appraiser (or multiple appraisers if required by a large case) to perform the work. If BLM is paying for the appraisals and they are to be contracted out, then ASD will typically obtain bids from at least three qualified private fee appraisers. If the non-federal party is paying for the appraisals, the BLM may deposit the funds in a 7122 account and ASD would then follow the same contracting process as for BLM funded appraisals. If the proponent is paying for the appraisals directly, then ASD will propose a choice of qualified contractors to the proponent and follow the same steps, other than the payment process, for ASD engaged appraisals. These include preparation of a scope-of-work and the conducting of a pre-work meeting with appraiser(s) and parties to the exchange.
3. Preparing the Appraisal - The appraiser given the assignment is responsible for collecting and analyzing market data, reaching an opinion of market value and preparing the appraisal report.
4. Completing the Appraisal Review - All appraisals are reviewed and approved by ASD prior to use by BLM. As the Bureau becomes involved in increasingly complex land transactions, the

17 The land exchange regulations (43 CFR 2201.1-1 (d) and 2201.3-2) require the value of the Federal and non-Federal land to be estimated in a similar manner.

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valuation requirements become similarly complex. The ASD review appraiser should coordinate these complex valuations with BLM staff and management on valuation developments that affect the project. Conversely, as projects or cases progress, realty specialists and managers should keep the ASD review appraisers and contract appraisers informed of developments that may affect the valuation process, especially any changes in the acres, interests in land, and reservations in the conveyance documents considered under the land exchange proposal. As each individual appraisal request is completed, both the submitter and the agency approver are notified via the ARRTS system. The ASD transmits copies of the approved appraisal reports and appraisal reviews to the authorized officer for the exchange via mail.

H. Exchanges at Approximately Equal Value

When the expected value of the Federal lands to be traded is not more than \$150,000, a qualified appraiser may prepare a Statement of Value (under ASD) guidance documenting the conclusion that the Federal lands do not exceed \$150,000 in value if the following conditions are met and concurred with by the authorized officer:

- The Federal and non-Federal lands are substantially similar in location, acreage, use and physical attributes; and
- There are no significant elements of value requiring complex analysis.

The ASD appraiser should coordinate Statement of Value preparation to ensure consistency and avoid duplication of work. In the event of a dispute in value, a full appraisal must be prepared. There would not be any equalization since the lands involved are of approximately equal value. See 43 CFR 2201.5.

I. Acknowledgement of Receipt and Acceptance of Appraisal for Agency Use

BLM should acknowledge the receipt of ASD approved appraisal reports; determine how the appraisals will be used, and then document the determination to accept the appraisal for agency use in the exchange process. The acceptance documentation should be signed by a line manager. Illustration 7-1 provides a documentation format.

J. Validity Period for Appraisal Values

Appraisal opinions are as of a certain fixed date. Approved appraisal reports or appraised values generally remain accurate for about six to twelve months from the effective date of the value opinion. However, the length of time before the approved values should be brought current depends on local market conditions and/or physical changes to the property or property rights involved. Changing market conditions affecting the real estate or the contributing resources such as timber, minerals, or other economic conditions may result in a significantly shorter or longer validity period. Chapter 2, Illustration 2-1 provides information on appraisal validity periods (6 months) when dealing with non-profit organizations.

The ASD review appraisers may serve as a resource in providing advice to BLM as to changing market conditions. Changing market conditions may significantly affect the value opinion and the

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period during which the approved appraisal would remain valid.

If an exchange will not be completed within this validity period, consult with the ASD review appraiser regarding the need to request a new appraisal. This may include a discussion of the appropriate valuation product, the time and cost involved or an extension of the validity period. Note that when the land exchange parties sign a binding exchange agreement locking in value-derived transaction prices an additional appraisal is not required. Please refer to Chapter 10 for additional information on binding exchange agreements.

K. Appraisal Availability to the Public

Approved ASD appraisals and review reports are official records used by the BLM in setting the price and reaching agreement on realty transactions. They are internal documents and are not subject to public release until the BLM has taken an action utilizing the information in the report. The appraisal report and appraisal review must be made available when the Notice of Decision is issued pursuant to 43 CFR 2201.7-1 (a). The BLM authorized officer in consultation with ASD, may release an appraisal and review report earlier on a case-by-case basis. The earliest time an appraisal would be available for public review would be when the BLM documents the acceptance for agency use.

Appraisals or appraisal review reports may contain confidential or proprietary business information and should be managed in accordance with Manual Section 1273, Vital Records and Manual Section 1278, External Access to BLM Information. Confidential or proprietary information in an appraisal report should be redacted before releasing the report under the Freedom of Information Act or for public review. Consultation with the ASD appraisal staff will determine what information is considered confidential or proprietary.

L. Documenting Agreement on Value¹⁸

All parties to an exchange should document their agreement on value based on the approved ASD appraisal. The format shown in Illustration 7-2 provides a written record for the official case record that the BLM and the non-Federal party or parties have reached agreement on the findings of the appraisal(s) and are willing to proceed.

M. Options and Constraints for Equalizing Values

The regulations under 43 CFR Part 2200 provide that the parties to an exchange may equalize the agreed upon values by: 1) agreeing to modify the exchange proposal by adding¹⁹ or excluding lands on either side of the exchange and, 2) either party making a cash equalization payment after making all reasonable efforts to equalize values by adding or excluding lands. The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation of costs under 43 CFR 2201.1-3 may not exceed 25 percent of the value of the Federal lands to be conveyed

18 In this BLM Manual/Handbook release, we have generally used the term *value*. This is primarily because Section 206 of FLPMA and the 43 CFR 2200 land exchange regulations use the term *value*. However, in many cases, “price” may be a more accurate word and is preferred by some appraisers.

19 Although equalization may occur by adding lands, any additions must have been included in a NOEP and fully addressed (required studies, NEPA, appraisal, etc.).

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(43 CFR 2201.6(b)). For example, if the value of the Federal land in an exchange is \$150,000 and the BLM will be compensating the non-Federal party for \$20,000 in assumed costs, then the exchange equalization payment made by the non-Federal party could not exceed \$17,500, because the two amounts combined equal 25 percent of the Federal land value. Please also keep in mind that under Section 206 (b) of FLPMA, the BLM must try to reduce the payment of money (by any party) to as small an amount as possible.

N. Addressing Equalization

The process for equalizing values begins at the feasibility report phase and carries through the decision phase. At the feasibility stage, discussions begin with the non-Federal parties concerning equalization options and priorities. The parties must first make all reasonable effort to equalize values by adding or deleting lands from the exchange proposal.

In the NEPA analysis, ensure that the evaluation of resources and potential public benefits considers the options for equalization.

In the Agreement on Value, where the stage is set to amend the ATI, it is necessary to modify legal descriptions or to set the stage for escrow instructions for depositing cash for the closing.

Ensure that the draft and final decision documents address that the exchange is an equal value transaction with whatever combination of land conveyance and other equalization method is necessary. The decision should also address why, if cash is used, that this is the smallest amount possible as required under the law.

The non-Federal party may agree to donate the difference owed by the United States. A donation is not a waiver, can be of any amount, and may have favorable tax incentives for the non-Federal party. The donation is processed as a separate action. Procedures to be followed for the donation process can be found in BLM Acquisition Handbook H-2101-1, Chapter 1.

O. Options for Waiving Equalization

The parties to an exchange may agree to waive a cash equalization payment if the amount to be waived doesn't exceed 3 percent of the value of the Federal lands conveyed, or \$15,000, whichever is less. A partial waiver is not allowable, and waivers cannot be applied to exchanges where the value difference is more than \$15,000. For example, if the difference in value is \$20,000, a waiver of \$15,000 plus an equalization payment of \$5,000 is not allowed. The entire \$20,000 equalization payment is required under 43 CFR 2201.6(c) and (d). Waivers can only be utilized when the authorized officer makes a written determination as part of the decision as to how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

Minimum factors to be addressed in written determinations include:

1. Feasibility of removing Federal lands or interest from the exchange;
2. Feasibility of adding non-Federal lands or interest to the exchange;

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3. Ability or willingness of the non-Federal party to equalize values with cash; and,
4. Relative importance of the acquisition. Do the benefits outweigh the cost of the waiver?

Waiving the equalization payment does not change the appraised value of the lands. Title insurance should be provided for the full value of the lands involved in the exchange regardless of which option is selected.

P. Procedures for Equalizing Multiple Transaction and Assembled Land Exchanges

Values can be equalized over a series of transactions by using assembled land exchange techniques, but require the following considerations (see Chapter 11 on Assembled Land Exchanges):

1. The first transaction must convey land to both parties. If values for this transaction are unequal, the difference must not exceed 25 percent of the value of the Federal land conveyed. All reasonable efforts to equalize values by adding or excluding lands should be made. The risk that subsequent planned transactions may not be consummated should be evaluated when determining amounts to be carried on a ledger.
2. For all other transactions, the value difference between the Federal lands conveyed and non-Federal lands received must remain within 25 percent of the cumulative value of the Federal lands conveyed within the agreement.
3. The waiver provisions cannot be used to equalize every transaction. The 3 percent waiver of the Federal land value up to \$15,000 (the waiver provisions) can be used only to complete the last transaction of the assembled land exchange. The agreement will end with the last transaction.

The ATI may be modified at any time in the exchange process to provide for an assembled exchange procedure. The agreement must contain the method of tracking the value differences between the Federal lands and the non-Federal lands conveyed and restrictions on cash equalization payments consistent with the regulations.

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Illustration 7-1

Memorandum

To: Insert title of Authorized Officer (Manager authorized to take the action or approve the
 AARTS request)

From: Insert Title of Requesting official in AARTS,

Subject: Receipt of Final Appraisal(s) and Administrative Acceptance for Use,
 XXX XXX Land Exchange.

On XXXXXXXX XX, 200X, the BLM received the approved appraisal(s), from the DOI Appraisal Services Directorate (ASD), for the XXXXXXXX land exchange. The date of value is X XXXXXXXX XX, 200X.

I recommend the BLM accept these appraisal(s) as the basis for the equal value exchange. Based on consultation with ASD and absent discovery of new information affecting the value conclusions or the underlying assumptions and conditions, I recommend the BLM's acceptance be valid for XX months from the date of value.

The (insert reference to responsible BLM staff and/or management) will consult as appropriate with the ASD review appraiser or other appropriate ASD staff as the end of this period approaches or if information deemed to potentially affect value is discovered.

The final agreement on value reached by the exchange parties must use appraisals that are current and accepted for agency use at the time of exchange closing.

I Concur: _____
 Field Manager

Distribution

DOI ASD,
XXXXXX Region, XXXXXXX Field Office

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Illustration 7-2

AGREEMENT ON VALUE FOR LANDS INVOLVED IN THE XXX EXCHANGE (X-XXXXX)

The following documents the agreement on value (price) reached as of (insert month/day/year), by and between **XXX** and the **United States, by the Authorized Officer of the Bureau of Land Management** ("BLM") with respect to assembled land exchange X-XXXXX.

Federal Land

Appraisal

_____ County

_____ Property _____ acres \$ _____

_____ Property _____ acres \$ _____

Total Value of Federal Land: \$ _____

Values for the federal lands are based on appraisals prepared by _____ dated _____, and _____, and approved by _____ ASD Review Appraiser, on _____, respectively.

Non-Federal Land

Appraisal

_____ County

_____ Property _____ acres \$ _____

_____ Property _____ acres \$ _____

Total Value of Non-Federal Land: \$ _____

Values for the non-Federal land are based on appraisals prepared by _____ dated _____, and approved by _____, ASD Review Appraiser on _____, respectively.

This is the first transaction in this assembled land exchange. In this transaction the United States will transfer a portion of the Federal land for non-Federal land at approximately the same value. The remaining Federal land will be transferred in a subsequent transaction pursuant to the above total value (price) of the Federal land.

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At this time, both parties agree to the establishment and maintenance of a ledger account pursuant to 43 CFR 2201.1-1.

Values for the following Federal and non-Federal land to be exchanged in this first transaction will be at the accepted values (prices) listed below, based on appraisal data, and current approved appraisals on file with BLM.

Federal Land

Appraisal

_____ County

_____ Property

\$
_____ Acres

Non-Federal Land

Appraisal

_____ County

_____ Properties

_____ Acres

\$

ACCEPTED AND APPROVED this ____ day of _____, 200_.

XXXXX

By:

UNITED STATES OF AMERICA
BUREAU OF LAND MANAGEMENT

By:

Authorized Officer

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Chapter 8 – Resolving Value Disputes

A. Introduction

Section 206 of the Federal Land Policy and Management Act, as amended by the Federal Land Exchange Facilitation Act of 1988, provides the BLM with alternatives to resolve disputes over the values of lands involved in an exchange. After the BLM receives approved appraisals from the Appraisal Services Directorate, if the values of the lands involved are in dispute, the parties may mutually agree to initiate a process to resolve the dispute. Resolution methods described in the regulations at 43 CFR 2201.4 include bargaining, other acceptable and commonly recognized practices, and arbitration. Any agreement to resolve value disputes must be in writing and made part of the administrative record of the exchange. Such an agreement shall contain references to all relevant appraisal information and state how the parties reconciled appraisal information to negotiate an agreement on value. In addition, the administrative record must contain an analysis and determination as to how any deviation from the use of values in an approved appraisal is in the public interest.

B. Avoidance of Value Disputes

From the beginning of the exchange process, efforts should be made by the BLM to prevent value disputes from occurring. Early communication and negotiations with non-Federal parties during the preliminary evaluation and development of exchange proposals should stress:

- It is the BLM's intention to complete the exchange based on values identified in appraisals approved by the Appraisal Services Directorate.
- Appraisals shall be conducted pursuant to nationally recognized appraisal standards. Alternative methods of valuation to assess non-market factors in an appraisal are prohibited (See Secretarial Order No. 3258 in Illustration 1-2).
- Non-Federal parties shall have opportunities to be involved in the valuation process and are encouraged to identify issues and to provide information that can be considered. However, it should be clear that opinions of value should be based on substantive data. Issues should be identified and information should be provided during the valuation analysis process, especially if it is believed there are unusual attributes of the lands or circumstances which make the lands "unique" or difficult to evaluate utilizing accepted appraisal practices. The BLM's consultation with the Appraisal Services Directorate should address these circumstances to determine their validity and to determine any special services (engineering, soils or other studies) necessary to properly evaluate the lands. These special services shall be incorporated into the feasibility report and agreement to initiate an exchange, including consideration of time and cost.

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Indications the non-Federal party's expectations of value are not realistic or that the BLM, in consultation with the Appraisal Services Directorate, and the non-Federal party will be unable to agree on valuation methodology may be a reason for the BLM to suspend negotiations or to reject the exchange proposal. If the BLM determines the exchange should proceed even though values are expected to be disputed, the feasibility report should clearly describe the circumstances and why processing of the exchange should proceed.

When the BLM submits the appraisal request to the Appraisal Services Directorate, the non-Federal party should again be requested to provide information that could be included in the request. The non-Federal party should be invited to participate in the pre-appraisal conference. Under the Uniform Appraisal Standards for Federal Land Acquisitions, property owners, or their designated representatives, must be given the opportunity to accompany the appraiser on the property inspection.

C. Resolving Disputes of Appraised Values

When an exchange party disagrees with the Appraisal Services Directorate-approved values, efforts should be made to informally resolve the dispute. The disputing party should be invited to submit additional market evidence or other substantive information (e.g., engineering reports, soils reports, legal opinions, zoning, etc.), for consideration by the Appraisal Services Directorate, as to why they believe the appraisal is not correct. Data from reports that do not meet Federal standards may be considered only if the validity of such data is documented and verified by the Appraisal Services Directorate. Additional methods to resolve value disputes include alternative dispute resolution strategies and processes. There is no clear direction as to which method may be best in any given situation, but it is recommended that a progression of techniques from most informal to most formal be attempted. Resolution processes include cooperative problem-solving, joint fact finding, facilitation, conciliation, resolution teams, dispute panels, and mediation. The BLM's Alternative Dispute Resolution/Conflict Prevention Field Guidebook¹ contains guidance on designing and implementing effective alternative dispute resolution processes. If mediators or other alternative dispute resolution contractors are proposed to be used, the BLM and the non-Federal party must agree as to funding for their services. Generally, the party disputing the Appraisal Services Directorate-approved value would be expected to fund any additional costs for resolving the dispute. The BLM staff members familiar with alternative dispute resolution policies may be contacted for more information on techniques and contractor sources.

Any proposal to submit the disputed appraisal to another qualified appraiser for review or to request another appraisal must be submitted to the Appraisal Services

¹Additional references include the Administrative Dispute Resolution Act of 1996 (P.L. 104-320), DOI Alternative Dispute Resolution website (www.doi.gov/adr), and WO IM 2004-159 Requirements for Departmental and Bureau of Land Management (BLM) Training; BLM's Policy on the Alternative Dispute Resolution (ADR)/ Collaborative Action Program

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Directorate. The Appraisal Services Directorate is responsible for the appraisal function within the Department of the Interior and shall determine if additional review or completion of another appraisal is justified. The BLM and the non-Federal party must agree as to funding for the additional services. The non-Federal party shall not be encouraged to independently provide a third party (i.e., non-Federal) appraisal (See the policy on appraisals prepared for third parties in Secretarial Order No. 3258 (Illustration 1-2)).

D. Alternative Valuation Processes

Any method of resolving value disputes that proposes to utilize values other than those identified in Appraisal Services Directorate-approved appraisals must be approved by the Deputy Director, Programs and Policy (Deputy Director). This responsibility cannot be delegated.

Prior to proposing any alternative valuation process, the BLM must determine if there are any limitations in other laws, regulations, or policies that would preclude the use of such processes. For example, BLM Manual 1203-Delegation of Authority (see Appendix 1, p. 29) requires congressional approval for all negotiated settlements under the Land and Water Conservation Fund and Section 206(c)(4)(c) of the Federal Land Transaction Facilitation Act limits acquisitions to a price not to exceed fair market value consistent with the Uniform Appraisal Standards for Federal Land Acquisitions. Such limitations may be applicable to the exchange itself or to instances where the non-Federal land is proposed to be acquired through multiple transactions (i.e., exchange and purchase) and the value of the non-Federal land is allocated among the transactions.

The State Director may submit to the Deputy Director, through the National Land Exchange Team, the Division of Lands, Realty and Cadastral Survey (WO-350), and the Assistant Director, Minerals, Realty and Resource Protection (WO-300), a request to use an alternative valuation process if a dispute of the appraised values cannot be reconciled informally. The scope of any alternative process is limited to the disputed values of the exchange. The request must include:

1. The proposed alternative valuation process or progression of processes that has been preliminarily agreed to by the BLM and the non-Federal party, the estimated timeframe, responsibility for costs, and documentation that no limitations exist for use of the alternative valuation process.
2. The name and title of the individual assigned the responsibility to represent the BLM in the alternative valuation process. This individual can be the BLM's authorized officer for the exchange or another individual specifically delegated responsibility by the State Director.

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3. Discussion of how the alternative valuation process differs from appraisal methods applied under the Uniform Appraisal Standards for Federal Land Acquisitions or the Uniform Standards of Professional Appraisal Practice.

4. Discussion of previous efforts to informally resolve the dispute of the appraised values and the reasons why they were not successful.

5. Preliminary public interest determination for utilizing the alternative process(es). Criteria for such a discussion include, but are not limited to:

- The estimated values or range of values if the alternative process is successfully completed and the effect on the configuration of the exchange.
- Importance of the exchange versus termination of the exchange.
- Resolution of value (amount above appraised value) versus costs spent to date, additional processing costs, and/or other unacceptable risks (additional appraisals or other actions) resulting from delay of the decision.
- Imminent destruction of the non-Federal land for the government's intended use is reasonably likely.
- Imminent unacceptable adverse effects on adjacent Federal lands if the non-Federal land cannot be acquired by the United States.
- Economic benefits of Federal ownership of the non-Federal land would exceed the anticipated higher costs.
- Anticipated support or opposition by State or local governments, interest groups, and the general public.
- Precedent being established and anticipated effects on current or future land tenure transactions.
- Verification that no other unresolved issues or conflicts exist between the BLM and the non-Federal party.

6. Proposed time period for which the values would be valid following approval.

7. Draft amended agreement to initiate an exchange incorporating the provisions for the alternative process(es).

The Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, House of Representatives; the Subcommittee on Interior and Related Agencies, Committee on Appropriations, United States Senate; and the Office of the Inspector General shall be notified of any exchange in which alternative valuation processes are proposed (See Secretarial Order No. 3258 (Illustration 1-2)). Upon Congressional direction, the BLM shall explain, using the assistance of the Appraisal Services Directorate, to the appropriate committees how the alternative valuation process differs from appraisal methods applied under the Uniform Appraisal Standards for Federal Land Acquisitions or the Uniform Standards of Professional Appraisal Practice.

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If the alternative valuation process is approved by the Deputy Director, the BLM shall request, through the Appraisal Request Review and Tracking System, the Appraisal Services Directorate to provide technical advice and any other services necessary to complete the process.

Any exchange in which alternative valuation processes are utilized to establish values must be approved by the Deputy Director at the decision stage, even if the Director authorizes individual State Directors to resume selective responsibility for land exchange management oversight and quality control. This responsibility cannot be delegated. For differentiation from market values identified in Appraisal Services Directorate-approved appraisals, such values shall be identified as “agreed-upon transaction values”. The request for approval of the preliminary agreed-upon transaction values may be included in the decision package for the exchange. The decision package must document the preliminary agreement on transaction values and validity period between the BLM and the non-Federal party and how the use of the agreed-upon transaction values is in the public interest. Any agreement resulting from alternative valuation processes must be in writing, signed by the BLM and the non-Federal party, and made part of the administrative record for the exchange. The agreement must document how the parties reconciled or compromised appraisal information to arrive at an agreement based on market values or other factors. A binding exchange agreement is required for any exchange in which alternative valuation processes are utilized to establish values. As with Appraisal Services Directorate-approved market values, agreed-upon transaction values shall be part of the public record and subject to public review following publication of the Notice of Decision on the exchange.

E. Types of Alternative Valuation Processes

Following are common types of alternative valuation processes that may be proposed:

1. Evaluation of Non-Market Factors

Appraisal standards state the highest and best use of a property must be an economic use. Accordingly, non-market or other “public interest” factors (e.g., scenery, preservation of wildlife habitat, conservation of open space) cannot be considered in an appraisal. It may be asserted that common measures of market value are unduly limiting and that such non-market values should be considered as a premium above a property’s market value or in lieu of the property’s market value. Congress may direct the BLM, in legislation for a specific transaction, to analyze and consider such factors, or the Department or the BLM may propose to consider such factors as a means to resolve land-based conflicts, negotiate solutions to decision-making impasses, or to advance broader public policy. Any evaluation of non-market factors must be clearly distinguished from appraisals.

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To ensure the values of the Federal and non-Federal lands are evaluated in a similar manner, the applicability of non-market factors must be addressed in the valuation for all parcels in an exchange.

2. Other Acceptable and Commonly Recognized Practices

It may be asserted that standard appraisal practices cannot be utilized because the property or interest is unique and existing market evidence is not applicable, or that market evidence is not available or is so outdated that it is not credible. Some mineral interests (e.g., oil shale) may not be economic to produce with current technology. To deal with such situations, other criteria may be proposed as to what would constitute "equal value" and methodologies may be proposed to quantify and qualify the lands or interests being evaluated. Prior to developing such methodologies, consultation with the Appraisal Services Directorate must occur to document that current market evidence is not available that would reliably support value conclusions through appraisal. Coordination with BLM resource specialists will likely be necessary.

3. Bargaining

Bargaining is a type of negotiation in which the parties debate the value of one or more of the parcels in the exchange which will be utilized and eventually come to an agreement. The essential qualities of the negotiation are that the parties share an important objective but have some significant difference(s). The purpose of the negotiation is to seek to reconcile or compromise the difference(s).

Bargaining is based on an objective analysis of the valuations in the appraisals. Prior to initiation of the bargaining process, the BLM shall secure market information or appraisals relied on by the non-Federal party and request review of the information by the Appraisal Services Directorate. The Appraisal Services Directorate shall review the non-Federal party's appraisal(s) and/or market information for technical adequacy and conformance with the Uniform Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice. All reviews shall be fully documented correlative review reports and shared with the non-Federal party.

Bargaining is constrained to the range of values reflected by appraisals meeting the Uniform Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice or market information that would be acceptable under those standards, notwithstanding the Appraisal Services Directorate-approved appraisal. The Appraisal Services Directorate shall prepare an analysis of market conditions pertaining to the appraised property(s), including the final range of value estimated for the appraised property as reflected by the market information accepted for consideration, and provide this analysis to the BLM's

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bargaining officer. The Appraisal Services Directorate shall be requested to act as technical advisor to the BLM's bargaining officer in the bargaining process.

4. Arbitration

Arbitration is a process in which the valuation disagreement is submitted to a neutral third party for resolution. Rules governing the process are those adopted by the American Arbitration Association.² Arbitration may be used when bargaining or other processes fail and the BLM determines that it is in the public interest to go forward with the land exchange.

The parties may agree to enter into arbitration under the following conditions:

- a. The Appraisal Services Directorate has approved an appraisal(s) for the lands that are the subject of arbitration and the appraisal was prepared by a qualified appraiser in compliance with the Uniform Standards for Federal Land Acquisitions, the Uniform Standards of Professional Appraisal Practice, and the Appraisal Service Directorate's written instructions.
- b. The BLM and the non-Federal party have outlined in an arbitration agreement the conditions and limitations of the proposed arbitration. Mandatory conditions include:
 - 1) The only issue to be arbitrated is the market value of the specified parcel(s) of land, and an arbitrator's decision shall be limited to the value estimate(s) of the contested appraisals. An arbitrator's decision must not include recommendations on any other terms of the proposed exchange, nor shall an arbitrator's decision infringe upon the authority of the BLM to make all decisions regarding management of Federal lands and to make public interest determinations.
 - 2) The non-Federal party will provide a second appraisal prepared by an appraiser qualified for the assignment within a period specified in the agreement. Arrangements for the second appraisal shall comply with the requirements in Secretarial Order No. 3258 (Illustration 1-2).
 - 3) The second appraisal must comply with the Uniform Standards for Federal Land Acquisitions, the Uniform Standards of Professional Appraisal Practice, and the Appraisal Service Directorate's written instructions provided to the original appraiser and has the same date of value as the Appraisal Services Directorate-approved appraisal.

²Rules are available on the American Arbitration Association website (www.adr.org)

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- 4) The Deputy Director will appoint an arbitrator from a list provided by the American Arbitration Association.
- 5) The second appraisal shall be submitted to the Appraisal Services Directorate at least 60 days before any arbitration hearing and at least 30 days before any pre-hearing conference or preliminary hearing. The second appraisal shall have a written review prepared by the Appraisal Services Directorate. The non-Federal party may obtain its own written review of the Appraisal Services Directorate-approved appraisal and/or the second appraisal. Appraisal reviews shall be in compliance with the Uniform Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.
- 6) The parties shall agree on the location and timing of all hearings, conferences, or meetings associated with the arbitration.
- 7) Allocation of expenses between the Federal and non-Federal parties must be specified. The BLM shall not share in the cost of any stenographic or other record of the hearing.
- 8) Any arbitration hearing shall be conducted by the American Arbitration Association using its "Arbitration Rules for the Real Estate Industry," except as modified by any requirements in this section. The arbitrator shall be bound by the same laws, regulations, and policies that govern BLM land exchange appraisals.
- 9) Either party may request inspection of the disputed property and any other properties by the arbitrator without the right of objection by the other party.
- 10) A technical advisor shall be allowed to attend all hearings, conferences, or meetings associated with the arbitration. A technical advisor and all expert witnesses shall be allowed to attend and participate in the hearings to the extent determined appropriate by the party they represent.
- 11) Either party shall be allowed a maximum of four non-participating observers at the hearing.
- 12) The arbitration hearing shall be open to the public to the extent they can be accommodated by the facility.
- 13) No arbitration hearing shall be allowed to proceed nor shall an arbitrator's decision be made in the absence of either party.

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- 14) Neither party may provide further proofs, post-hearing briefs, nor otherwise cause delay of an arbitrator's decision beyond the date and time originally prescribed for closing of the hearing. The hearing may not be reopened.
 - 15) Upon closing the hearing, the arbitrator shall provide a written decision within 30 days of the conclusion of the hearing. The arbitrator's decision shall provide an explanation of the basis for the arbitrator's value determination to allow the Federal and non-Federal parties to determine whether they choose to proceed with, or withdraw from, the exchange.
- c. Within 30 days after completion of arbitration (date of the arbitrator's decision), either party may withdraw from the exchange by providing written notice to the other party.
 - d. If the parties tentatively agree to proceed or to modify the exchange based on the arbitrator's decision, the State Director shall submit the arbitrator's value conclusion to the Deputy Director for approval. The submission shall include the Appraisal Services Directorate-approved appraisal and associated appraisal review, the non-Federal party's appraisal and any Appraisal Services Directorate review of the non-Federal party's appraisal, the arbitrator's decision, analysis of the arbitrator's decision including a technical evaluation by the Appraisal Services Directorate, and recommendation to the Deputy Director for approval and appropriate rationale for the recommendation.

A decision to withdraw from the exchange may be made by the BLM or the non-Federal party at any time prior to entering into a binding exchange agreement. If values established by arbitration are approved by the Deputy Director and the parties agree to proceed with the exchange, the values are binding upon all parties for a period not to exceed two years from the date of the arbitrator's decision (See 43 CFR 2201.4(a)(4)).

If either party chooses not to accept the arbitrator's decision, but can agree to a value of the disputed property, the State Director shall submit the value to the Deputy Director for approval of that value recommendation. The submission shall include the Appraisal Services Directorate-approved appraisal and associated appraisal review, the non-Federal party's appraisal, any Appraisal Services Directorate review of that appraisal, the arbitrator's decision, the written basis for the value conclusion being different than the arbitrator's decision including an analysis of that value conclusion by the Appraisal Services Directorate, the time period for the value to be binding upon all parties, and recommendation to the Deputy Director for approval and appropriate rationale for the recommendation.

F. Documenting Value Disputes

Because the BLM's original intention is to complete exchanges based on Appraisal Services Directorate-approved appraisals and because there should be emphasis on avoiding value disputes, feasibility reports and original agreements to initiate an exchange should generally not contain provisions that identify processes to resolve value disputes. Informal resolution of disputes of appraised values may not require amendments to agreements to initiate an exchange. If alternative valuation processes are proposed during processing of an exchange, the agreement to initiate an exchange must be amended to identify the provisions for the proposed processes. In all instances, the administrative record for the exchange must document the dispute, how the dispute was resolved, and the agreement on values. For alternative valuation processes, the administrative record must also document how the deviation from the use of values in an approved appraisal is in the public interest. The agreement must reference pertinent appraisal information and explain the rationale and conclusions supporting the agreed-upon transaction values.

G. Role of the Appraisal Services Directorate in Value Disputes

The Appraisal Services Directorate is responsible for the appraisal function within the Department of the Interior. In any informal resolution of disputes of appraised values, the Appraisal Services Directorate is solely responsible to consider the appraisals and any valid market evidence that is provided as it reflects on the Appraisal Services Directorate-approved value being disputed and to determine if additional review or completion of another appraisal is justified.

The use of alternative valuation processes to establish agreed-upon transaction values in exchanges is a BLM managerial function, not an Appraisal Services Directorate appraisal function. The BLM is solely responsible to determine if the use of such processes is appropriate, to negotiate values, and to come to an agreement on values with the non-Federal party. In any such processes, the role of the Appraisal Services Directorate is to:

1. Provide technical compliance evaluations of all appraisals or other market evidence submitted for consideration in alternative valuation processes.
2. Provide advisory consultation and technical guidance to the BLM in alternative valuation processes and to legal counsel in litigation settlement negotiations that provides known parameters of the marketplace within which property(ies) may compete, while ensuring that this advisory consultation is provided in a manner that does not conflict with the Uniform Standards of Professional Appraisal Practice. The consultation shall cite all current appraisals relevant to the property and identify the competitive range of value within which the appraised property may compete, notwithstanding the Appraisal Services Directorate-approved appraisal.

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3. Assist the BLM in preparation of arbitration agreements.
4. Provide technical evaluation of arbitration decisions.
5. Provide advice to the BLM, in the absence of current market information reliably supporting value, concerning the appropriateness and reliability of other acceptable and commonly recognized methods to determine the agreed-upon transaction value.

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Chapter 9 - Decisions, Notices, Protests, and Appeals

A. Decision Documents for Land Exchanges

→ The decision document for a land exchange is the decision record (or record of decision). The decision document must address public interest criteria, third party rights, and an equal value determination.

Before issuing a decision, the BLM must complete all studies, documentation, NEPA analysis, and appraisals necessary to determine if an exchange is in the public interest and in compliance with applicable laws and regulations and that the exchange is of equal value or can be equalized within the regulatory limits (43 CFR 2201.7-1(a)).

B. Content of a Land Exchange Decision Document

Guidance for preparing decision documents (decision record or record of decision) can be found in the BLM Manual 1790, and Handbook H-1790-1, and instruction memoranda. In addition the Planning Handbook H-1601-1 covers instances where plan amendments are necessary. At a minimum, a decision document must include five items. The following sections provide detailed information on the documentation requirements associated with each of the five required items.

1. Public Interest Determination. The authorized officer must make a finding that the public interest will be well served by completing an exchange. The findings associated with a public interest determination must be based on weighing the resource values and public objectives of the Federal land against the non-Federal land. In conducting weighted evaluations, the regulations are specific about what values and objectives should be considered (43 CFR 2200.0-6 (b)):

“The authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple use values; and fulfillment of public needs.”

Two specific findings must be contained in the public interest determinations pursuant to 43 CFR 2200.0-6(b)(1) and (2):

“The resource values and the public objectives that the Federal land or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired.”

“The intended use of the conveyed Federal land will not significantly conflict with established management objectives on adjacent Federal land and Indian trust lands.”

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2. Legal Description. The decision must include a complete legal description of the estates being exchanged, including a listing of all reservations, outstanding interests and encumbrances. Because of the length of the information required, this information is often attached as an exhibit or appendix to the decision. The information contained in this section must be consistent with the Notice of Exchange Proposal and amendments thereto, the ATI and amendments thereto, the NEPA document, the appraisal, and the decision and conveyance documents. Any change in or deviation from the lands or interests therein that occurs in the processing of an exchange proposal must be fully documented.

Items that need to be carefully considered and/or documented in the administrative record when changes to the exchange proposal are being considered include:

- a. Land or interests excluded from the exchange and minor corrections of land descriptions and other insignificant changes do not require republication of the Notice of Exchange Proposal (43 CFR 2201.2(c)). However, the addition of any land or interest in land to the exchange proposal requires republication of the Notice of Exchange Proposal.
 - b. Any changes to minerals, water, timber, access, and/or other appurtenant rights that are being conveyed, as well as those rights that conveyances are made subject to, and/or reserved in the conveyance, need to track in exchange processing with the same level of accuracy, consistency, and detail as the legal description.
 - c. The regulations are explicit about ensuring parties with outstanding interests are notified of exchange proposals and that all outstanding interests are equitably considered as a part of processing the land exchange and making a public interest determination. Outstanding interest means rights or interests in property held by an entity other than a party to the exchange (43 CFR 2200.0-5(p)).
 - d. In addition to covering the legal description of the estates being exchanged, the decision should also address any lands or estates that are being excluded from the exchange because of resources issues, equalization, etc. You may do this by including a separate legal description for the lands being excluded in the decision document or an attachment. Another option is to include a simple statement like the following: "All other Federal and non-Federal lands initially considered for exchange and identified in the NOEP, published on [date], have been deleted from the proposal and will not be conveyed in this exchange." Briefly explain and document the reasons for the exclusion.
3. Equal Value Requirements. Land exchange decisions must also include a statement that the land or interests to be exchanged are of equal value and how the value has been established (43 CFR 2200.0-6(c)).

If the approved appraised values are not equal, the decision must describe how all reasonable efforts were considered to equalize values by modifying the proposal to limit the cash equalization to as small an amount as possible. Identify the amount of cash equalization payment (43 CFR 2201.6(a)(1) and (2)).

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If a waiver of equalization is being approved, the decision must describe how the waiver will expedite the exchange and better serve the public interest (43 CFR 2200.6(d)).

Another option available is for the non-Federal party to donate any excess value owed by the U.S.

For assembled land exchange decisions, also see Chapter 11 for additional decision requirements.

For exchanges involving compensation for costs assumed, waiving up to 3percent or \$15,000 (43 CFR 2201.6), and donation, see Chapter 3 for additional decision requirements.

4. Conformance with Land Use Plans. The decision must include a land use plan(s) conformance determination supporting the disposal of the Federal land and acquisition of the non-Federal land (43 CFR 2200.0-6(g)). It is often appropriate to also summarize from the environmental documentation how the decision interfaces with state and local land use plans.
5. Implementation Period. The decision document must indicate that implementation of the Decision occurs only upon expiration of the 45-day protest period initiated by the publication of a Notice of Decision (NOD) (43 CFR 2201.7-1) and the resolution of any protests. The decision document should not include appeal language.

C. Decision Review, Approval and Quality Assurance Requirements

To strengthen management oversight and ensure adequate controls are in place for management decisions involving land exchanges a national level review process is required for all land exchanges. Under this review process the National Land Exchange Evaluation and Assistance Team (NLET) reviews land exchanges at the decision stage. The NLET review and recommendations are then forwarded to the Washington Office Lands and Realty Division (WO-350) for further review. WO-300 will then review for subsequent approval by the Deputy Director. This practice will continue until the Director authorizes individual State Directors to resume selective responsibility for land exchange management oversight and quality control. **Also see IM 2003-028 & pg. 2-10 Feasibility Review & pg. 2-20 Issue Paper Format**

To expedite the review and approval process a format (see Illustration 9-5) has been developed for providing a summary of the decision review information. State Offices should develop this summary information prior to forwarding the package to the NLET for further review.

1. **Field Office Responsibilities:** Field Offices have primary responsibility for completion of land exchange processing in a manner and to the degree necessary to ensure strict accordance with laws, regulations and policy. Field Offices will also prepare the initial decision review package and summary document. At a minimum the decision package must contain an approval request memo, updated issue paper, decision summary, maps, draft decision document, draft notice of decision (NOD), appraisal review report and related information, Solicitor's review and other pertinent information.
2. **State Office Responsibilities:** State Directors are responsible for ensuring the integrity of the land exchange program and providing management oversight and control within their geographic

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jurisdiction. As a part of the approval process, State Offices have quality assurance responsibilities for land exchange processing, including coordination with the Field/Regional Solicitor's office for review and concurrence. Before recommending a land exchange for further consideration or approval, State Directors must ensure the public interest will be served and that all statutory, regulatory, policy, and other requirements are met. If the State Office identifies errors, inconsistencies, flaws or other weaknesses, land exchange processing must be suspended until the necessary corrective action(s) is taken. State Offices also review and submit the decision package and summary document for NLET review and concurrence.

Solicitor review required
per IM 2007-181

3. Washington Office Responsibilities: As explained above the Washington Office has established review and concurrence requirements for land exchange decisions, including Deputy Director Approval.

D. Publication and Distribution of the NOD

When the Decision to approve or disapprove an exchange proposal is made, the authorized officer must publish and distribute a NOD pursuant to 43 CFR 2201.7-1.

Publication and distribution requirements are similar to those described in Chapter 5 for the NOEP. However, publication occurs only one time rather than for four consecutive weeks. The BLM is required to notify the Governor at least sixty days prior to conveyance of public lands. The sixty day notification can run concurrently with publication of the NOD. Distribution should be at least identical to that conducted with publication of the NOEP. Distribution lists should be expanded to include any constituent or third party interests who expressed an interest in involvement or ownership interest in the properties in the land exchange during processing.

Mail distribution of the NOD is generally assisted by the use of a cover letter explaining to recipients that receipt of the NOD is for informational purposes and does not require a response unless the recipient is inclined to obtain additional information or become further involved. Such a preface often helps to defuse the confusion associated with receipt of the notice.

Where there is an elevated interest in land exchange proposals, the authorized officer has the option of considering additional measures for distributing information on the Decision. Those measures could include a *Federal Register* publication, local news releases, posting the Decision on the Internet, or conducting open houses, field tours or other measures. In general terms, where there is a high level of interest or potential for controversy, it is better to ensure complete and accurate notification of the Decision, including the potential need to distribute the notice via certified mail, to formalize the administrative protest process.

1. Minimum Content Requirements for a NOD.

- a. The date of the Decision.
- b. A concise description of the Decision.
- c. The name and title of the deciding official.

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- d. Directions for obtaining a copy of the Decision or other information regarding the exchange.
- e. The beginning date of the protest period. The protest period begins the day after publication of the NOD in the newspaper and runs for 45 days.

2. Optional Additional Information. To communicate the positive aspects of the Decision, additional information can be included in the Notice itself, in a cover letter used to distribute the Notice, or some combination thereof. If processing the exchange involved an elevated level of public participation and interest, it may be appropriate to utilize a news release to announce the Decision, especially if the news release can be used to accentuate the positive aspects of the land exchange. The following is a list of optional additional content or information that may be included in notices, that while not required, is generally beneficial in assisting readers and recipients in better understanding the Decision:

- a. Serial number of case file and general description of the location of the land involved.
- b. A reference to the previously published NOEP and other opportunities afforded for public involvement in the exchange process.
- c. A summary of the public benefits associated with the Decision.
- d. A statement requesting that protests be specific to a parcel or specific to which aspect of the Decision has raised concern.
- e. A statement about the equal value determination for the exchange.

A sample Notice of Decision is included in Illustration 9-1.

The Notice of Decision is a required action code in LR2000. The case file and serial register page should be updated at this time, with date of NOD and publication dates. If there is an appeal, the original case file will need to be copied and the original forwarded to IBLA.

E. Combining a NOD with a Notice of Plan Amendment

A Notice of Decision can also be published in conjunction with either a plan amendment and/or an environmental impact statement. Notices can be combined and processing can proceed consistent with the regulations (see Illustration 9-2). The Council of Environmental Quality regulations, the BLM planning regulations, and the Departmental Manual all encourage the use of a combined notice. Refer to 43 CFR 1610.2 and 1610.5-2 for additional information that needs to be considered for integrating the processes and time frames for comment and appeal in these situations. Follow the most restrictive requirements when combining the notices (i.e., the maximum public comment periods).

F. Protest and Appeal Periods

In making a land exchange Decision, the regulations at 43 CFR 2201.7-1 allow for a 45 day protest period and also a subsequent right of appeal to the Interior Board of Land Appeals (IBLA) pursuant to 43 CFR

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Part 4. A protest period is allowed first, and if protests are received by the authorized officer, they are addressed by the State Director, after which an appeal to IBLA may be filed. However, an alternative process may be undertaken, whereby the Assistant Secretary, Land and Minerals Management (ASLM) is requested to take jurisdiction and can dismiss the protest initially, which precludes the avenue of appeal to IBLA.

State Director Resolution of a protest of a land exchange decision, issuance of new or amended decision documents, and publication of a related Notice of Decision all require consultation with the NLET prior to resolution. In some instances, approval may be required from the Deputy Director.

1. Protest Period. A protest period is available for 45 days following the date of publication of the Notice of Decision. Protests may be raised related to NEPA documentation or other content of the Decision document such as the public interest determination or determination of equal value.

The Manager who has issued the Decision receives and analyzes the protests and considers the merits of the issues raised and evaluates options for resolving the protests.

Often protests arise from a lack of understanding of the Decision. In many cases it is beneficial to conduct additional discussions with the protestant to assist them in understanding the decision and land exchange process. In some instances it may also be beneficial to have the Facilitator or non-Federal exchange party participate in such discussions to help respond to the concerns raised in the protest. Should this mechanism resolve the concerns, a written retraction of the protest must be included in the case file documentation.

Other times it may be necessary to consider vacating or modifying the Decision to address issues or concerns generated in the protest period. In these situations, it must be ensured that all appropriate file documents are revised to remain consistent with information being reconsidered, e.g., appraisals. When a Decision is vacated or modified, it is necessary, to issue a new decision, re-publish a NOD, and allow for a 45-day protest period applicable to the new Decision.

Where additional dialogue does not produce acceptable options for resolving the protests, the authorized officer may request the State Director to consider issuing a Decision to dismiss the protests. Depending on the complexity of the issues and local practices, it may be appropriate to consult with the Solicitor when considering protest dismissals.

A Decision to dismiss a protest must include standard language related to appeal rights. Illustration 9-3 is a sample protest dismissal decision.

Where protest resolution processes appear likely to create delays in potential completion of a land exchange, a binding land exchange agreement may be utilized to hold all other aspects of the transaction in place while the protest dismissal and appeal processes evolve. See Chapter 10 for further information on Binding Land Exchange Agreements.

2. Appeal Period. The State Director's Decision in response to a protest is appealable to the Interior Board of Land Appeals (IBLA) in accordance with 43 CFR 4.410. If an appeal is filed and IBLA grants a stay, the effect of the decision is suspended until IBLA rules on the appeal. If IBLA does not grant a stay

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within the 45 days provided by 43 CFR 4.21, the Decision may be implemented at the authorized officer's discretion. The authorized officer, in consultation with the Field/Regional Solicitor and the non-Federal party, should consider the risk of implementing the Decision should IBLA not uphold the decision.

Protest and appeal information should be listed in LR2000.

3. Requesting Assistant Secretary Intervention. The BLM may request that the Assistant Secretary, Land and Minerals Management assume jurisdiction over an exchange and sign the Decision in response to a protest. When the Assistant Secretary signs the Decision, any further challenges would be filed in Federal Court. This option requires careful consideration and should be used sparingly. Refer to Illustration 9-4 for procedures to follow when requesting that the Assistant Secretary dismiss the protest.

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Illustration 9-1 **NOTICE OF DECISION** **TO EXCHANGE LANDS IN XXX COUNTIES, UTAH**

UNITED STATES DEPARTMENT OF THE INTERIOR, Bureau of Land Management, XXXX,
Address

Notice is hereby given that on MMDDYY, XXXXXXXXXXXX, XXX Field Office Manager, Bureau of Land Management, issued a decision to approve a land exchange with XXX of XXX.

The following described public land has been determined to be suitable for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended:

Federal Land to be patented to XXX:

Legal description
Containing a total of XXX acres.

The patent will reserve a right-of-way for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945); and a right-of-way for XXXX pursuant to XXXX

The patent will be issued subject to those rights for XXX pursuant to....

In exchange the United States will acquire the following described land from XXXX:

Non-Federal Land to be conveyed to the United States:

Legal description
Containing a total of XXX acres.

The XX parcels of land to be acquired by the United States are in XXX, XXX County. They are well blocked with other public lands in the area and both have resource value for xxxx and xxxxx. The public lands being disposed of are located at XXXXXXXX in XXX County. Public access will be preserved on the existing road to the XXXXXXXX. The public interest will be well served by making the exchange.

A copy of the decision may be obtained by writing the XXXX Field Office at the above address or calling XXX-XXX-XXXX

For a period of 45 days from the date of publication of this notice, interested parties may submit written protests to the Field Manager, XXXX Field Office at the above address.

Field Office Manager

Date

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Illustration 9-2

COMBINED PLAN AMENDMENT/NOTICE OF AVAILABILITY OF DECISION

NOTICE OF AVAILABILITY OF DECISION TO EXCHANGE LANDS IN XXX COUNTIES, WYOMING AND AMEND XXX RESOURCE MANAGEMENT PLAN²⁰

UNITED STATES DEPARTMENT OF THE INTERIOR, Bureau of Land Management, XXXX,
Address

This notice provides for a comment period for two different decisions, one a plan amendment and the other a land exchange.

Notice is hereby given that on MMDDYY, XXXXXXXXXXXX, XXX Field Office Manager, Bureau of Land Management, issued a decision to approve a land exchange with XXX of XXX.

Notice is also given that on MMDDYY, XXXXXXXXXXXX, XXX Field Office Manager, Bureau of Land Management, issued a decision to amend the XXX Resource Management Plan (RMP) with respect to management of Federal land in XXX County.

The plan amendment and exchange are made pursuant to Sections 202 and 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended:

Federal Land to be patented to XXX:

Legal description
Containing a total of XXX acres.

The patent will reserve a right-of-way for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945); and a right-of-way for XXXX pursuant to XXXX

The patent will be issued subject to those rights for XXX pursuant to

In exchange the United States will acquire the following described land from XXXX:

Non-Federal Land to be conveyed to the United States:

Legal description
Containing a total of XXX acres.

The XXX parcels of land to be acquired by the United States are in XXX, XXX County. They are well blocked with other public lands in the area and both have resource value for xxxx and xxxxx. The public

²⁰ Example formatted for newspaper publication. Before sending to Federal Register, you will need to revise the format appropriately for *Federal Register* publication.

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lands being disposed of are located at XXXXXXXX in XXX County. Public access will be preserved on the existing road to the XXXXXXXX. The public interest will be well served by making the exchange.

The XXX Resource Management Plan (RMP) will be amended with respect to the future management of the XXX parcels of land in XXX County, to be acquired by the United States.

A copy of the decision may be obtained by writing the XXXX Field Office at the above address or calling XXX-XXX-XXXX

Dates:

Planning Protest - Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest must be in writing and filed with the Director, Bureau of Land Management, 1800 "C" Street, N.W., Washington D.C. 20240, within 30 days of this notice.

Land Exchange Protests: On or before (Insert 45 days from date of publication in the FEDERAL REGISTER), interested parties may submit comments or protests regarding the land exchange to the Field Manager, XXX Field Office, Bureau of Land Management, at the above address.

In the absence of any planning protest or objections regarding the land exchange, the decision will become the final determination of the Department of the Interior and the Planning amendment will be in effect.

Field Office Manager

Date

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Illustration 9-3 Protest Dismissal

United States Department of the Interior BUREAU OF LAND MANAGEMENT

California State Office
2800 Cottage Way, Suite W1834
Sacramento, California 95825
www.ca.blm.gov

In Reply Refer To:
CACA 31270
2200
CA-931

CERTIFIED MAIL-- RETURN RECEIPT REQUESTED

DECISION

Mr. Protester	:	Land Exchange CACA 31270
XXX	:	Allen Exchange - Phase 3
Los Angeles, CA 90012	:	

Protest Dismissed Public Land to be Exchanged

In January 1993, the Bureau of Land Management (BLM) and The Nature Conservancy (TNC) signed an agreement to initiate a land exchange. The private lands proposed by TNC for exchange are located in the Kern River Valley; the public land proposed for transfer to TNC is a scattered tract known as Tract #1 located near the town of Kernville, California, which in the Caliente Resource Management Plan (CRMP), has been found suitable for disposal. The purpose of the exchange is to reduce the number of scattered BLM tracts, to consolidate the BLM lands for more efficient management, and to acquire private lands within and adjacent to the Domeland Wilderness. TNC has already conveyed the wilderness land and two other environmentally sensitive parcels to the United States. Tract #1 will be used to satisfy the land debt owed for those lands already acquired from TNC. The tract of public land is legally described as:

Mount Diablo Meridian, California, Kern County

T. 25 S., R. 33 E.,

sec. 15, lots 32, 33, 35, 41, 43, 44, 45, 46, 47, and 48. 62.19 acres

A Notice of Decision (NOD) was issued on September 3, 1998, and then published in the Kern Valley Sun newspaper, notifying the public of the decision of the Bureau of Land Management (BLM) to approve the exchange with TNC involving Tract #1. A 45-day comment period invited written comments

BLM MANUAL
Supersedes Rel. 2-286

Rel. 2-294
8/31/2005

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from interested parties. On October 15, 1998, the BLM Bakersfield Field Manager received a letter from you in which you objected to the exchange of BLM Tract #1 with TNC. The concerns raised in opposition to the disposal of Tract #1 focused on (1) the frequent use of nearby elementary school students for scientific investigation and recreation; (2) a claim of existence of the trailhead for the historic Mule Trail on the land; (3) daily use of the land by local horsemen, hikers, hunters and birdwatchers; and (4) BLM's responsibility to maintain open space land for public use. The following are our responses to these points:

(1) The majority of the land bordering Tract #1 on the south is owned by the Kernville Union School District. The District acquired the land from the United States in April 1967 pursuant to the Recreation and Public Purposes Act of 1926 for school and educational purposes, for development of Kernille Elementary School. Of the 21.78 acres the United States conveyed to the District, approximately 10 acres currently are not being fully utilized by the school; the lands remain undeveloped and suitable for scientific investigation and recreation. Also, the Sequoia National Forest property lies just 350 feet east of the school property and it, too, is accessible to the students for scientific and recreational opportunities via a trail right-of-way that BLM has reserved for public use across Tract #1 as an access point to the National Forest.

(2) Our archaeologist/historian researched the possibility that the Harley Mine Mule Trail may have crossed Tract #1. After field inspections, diligent research, and discussions with local historians, we have determined that the most likely location of the mule trail is approximately 1/4 mile north of Tract #1. This would be a logical route, since the location of the Old Harley Millsite was near the current location of Camp Owens, approximately 3/4 mile northwest of Tract #1. Our field inspections revealed no physical evidence or accessories that would be expected if, in fact, the trail was located on Tract #1. The dirt road on Tract #1 that is often referred to as the mule trail is simply an access route that connects to the trail further into the mountains on the National Forest.

(3) We have considered the recreation value of the properties to be acquired of a higher public interest than any recreation provided by Tract #1. The lands that already have been acquired in this exchange (698 acres) provide recreational opportunities for the general public in the Kern River Valley area. A 400-acre wilderness inholding, including an additional 298 acres of environmentally sensitive land has been acquired through this exchange which will provide recreational opportunities such as you describe. In addition, the National Forest land is immediately adjacent to Tract #1 and to other areas of the town of Kernville. These national forest lands are available for public recreational use. The public interest will be better served by the disposal of this 62-acre parcel (Tract #1) adjacent to the town of Kernville and the acquisition of the 698 acres in other areas of the Kern River Valley.

(4) While there is no statutory requirement for BLM to maintain open space for public use, this exchange will, in fact, accomplish the maintenance of open space in the Kern River Valley. In this instance, there is adequate open space surrounding the town of Kernville (the National Forest land) that is available for public use. The isolated nature of Tract #1 (no legal public access to the parcel exists) and its urban interface make it difficult and uneconomic for BLM to manage. The public interest is better served by exchanging this BLM land for other lands within the Kern River Valley.

Based on the foregoing, and the documentation contained in the case record, the Notice of Decision dated September 3, 1998, issued by the authorized officer of the Bureau of Land Management, Bakersfield Field Office is in accordance with the regulations found in Title 43, Code of Federal Regulations 2200. Therefore, BLM intends to proceed with the disposal of the public land parcel known as Tract #1. The

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public interest will be well served by completion of this exchange transaction.

Your protest to the exchange of BLM Tract #1 identified in exchange #CACA 31270, is hereby dismissed.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within thirty (30) days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting a stay.

California State Director

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Illustration 9-4 Requesting Assistant Secretary Dismissal of Protest

Land exchange protest dismissal packages submitted to the Washington Office (WO-350) for consideration by the Assistant Secretary, Land and Minerals Management (ASLM) should contain the following documents:

--	Background Information Paper	(transmit to WO by electronic mail)
--	Decision(s) (prepare for ASLM signature)	(transmit to WO by electronic mail)
--	Issue Summary Paper (1 page)	(transmit to WO by electronic mail)
--	Transmittal Memorandum (from the BLM Director to the ASLM)	(transmit to WO by electronic mail)
--	Transmittal Memorandum (from the State Director to the Director (350))	(transmit to WO by express mail)
--	Affidavit(s) or Proof of Publication	(transmit to WO by express mail)
--	Appraisal (if necessary)	(transmit to WO by express mail)
--	Environmental Assessment (if necessary)	(transmit to WO by express mail)
--	Map(s) (maps must be legible)	(transmit to WO by express mail)
--	Mineral Report (if necessary)	(transmit to WO by express mail)
--	Notice(s)	(transmit to WO by express mail)
--	Protest Letter(s)	(transmit to WO by express mail)
--	Regional Solicitor's Review and Concurrence Memorandum	(transmit to WO by express mail)

These documents are usually prepared or generated during land exchange processing. You should transmit legible copies of these documents to the WO by express mail to ensure that the ASLM has sufficient and complete information available to reach a decision. You must provide strong documentation of the significant public interest and importance of the land exchange to justify consideration by the Assistant Secretary.

Prepare a separate file for each document. Do not insert the BLM letterhead. Insert Page Numbering and a Times 12 pitch font.

WO-350 will assemble the package, obtain the necessary signatures and surnames, and transmit the package to the ASLM for consideration of protest dismissal. Expect at least a four week time frame for processing most land exchange packages through the ASLM. The State Director and/or authorized officer will need to be available to assist in briefing the ASLM.

If the ASLM dismisses the protest, WO-350 will notify you by telephone and forward a copy of the approved package and the original copy of the approved decision(s) to your office by express mail. After telephone notification you may complete title transfer. When you receive the original copies of the decision(s) you are responsible for distribution via certified mail (return receipt requested).

Unique situations may arise and submission requirements may vary over time. It may also be necessary to submit additional supporting documentation or information.

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Illustration 9-5 LAND EXCHANGE DECISION SUMMARY

State _____ Serial Number _____ Exchange Name _____
Field Offices and Counties involved _____
Acreage proposed for exchange (Federal and non-Federal*) _____
Parties to the exchange (including other Federal agencies) _____

Summary of Proposal (Bullets describing lands and interests in land proposed for exchange, such as severed minerals or split estate, water rights, unusual reservations/encumbrances; objectives to be served by the exchange; and a description of any parties to the exchange, including those acting as facilitators.)

- _____
- _____
- _____

Land Use Plan Consistency (Cite applicable land use plan decisions for both Federal and non-Federal land and how plan specifically supports acquisition and conveyance.)

Public Interest Factors (Summarize factors considered in reaching a determination of public interest, including a description of the “net effect” that the values being conveyed out of Federal ownership are not more than the values being acquired into Federal ownership) _____

Appraisal/Valuation Information (Bullets listing who prepared/reviewed/approved all appraisals, dates; total value and per acre value for Federal and non-Federal land; highest and best use determinations, highlighting situations where existing use differs from highest and best use in appraisal; where an interest in land is proposed for acquisition or conveyance, how mineral estate/split estate, water rights, easements, etc. were considered and valued; unique, complex or potentially controversial aspects of the valuation process and any other pertinent appraisal issues. Identify any unique, complex or potentially controversial aspects of the valuation process. Include value implications of various alternatives, land or parcel configurations, conveyance groupings, timing or other approaches.)

If agreement on value was not reached based on appraisals and an alternative method was utilized

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(bargaining, arbitration or other commonly used methods), explain the appraisal process which preceded this and a complete description of the process that was utilized to reach agreement on value.

Value Equalization (Explain prioritization strategy for equalizing values by adjusting lands included in the exchange and identify amount of any equalization payments.)

Minerals Issues Include discussion of mineral potential, conclusions of the mineral report, encumbrances, reservations, split-estate, future management and other minerals related issues for the Federal and Non-Federal Lands.

Land Exchange Issues (Support or opposition by public, State/local government, interest groups and summary of outreach efforts to communicate and resolve exchange issues.)

Protests or other Objections Received (If the exchange decision has been signed and protests were received, describe the nature of the protests and any follow up action, including protest dismissal.)

Solicitor's Office Review (Note any issues raised from Solicitor's review.)

Summary (Important aspects of the proposed land exchange, whether processing requirements were met, additional information, a summary of deficiencies noted, additional requirements and contingencies.)

** Identify mineral estate acres.*

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Chapter 10 - Binding Exchange Agreements

A. Executing a Binding Exchange Agreement

All Binding Exchange Agreements must be executed by the State Director after consultation with the Field/Regional Solicitor. When executed, the Binding Exchange Agreement will legally commit the BLM to completion of the exchange, potentially obligate the BLM to reimburse the other party for all costs incurred should the agreement not be honored as well as any other contractual commitments that may have been agreed to by the parties.

Binding Exchange Agreements can only be executed subsequent to approval of a land exchange Decision. Generally, the agreement is executed in conjunction with the approval of the Decision and before publication of the Notice of Availability of the Decision. However, the agreement may be completed any time after the Decision is issued.

It is beneficial to contemplate the need for or benefits of including the Binding Exchange Agreement as a part of the process while the ATI is being developed. Early consideration ensures that adequate advance planning is allowed for drafting the agreement and completing legal review. As Binding Exchange Agreements create obligations on both sides of the transactions, non-Federal parties often wish to seek legal review of the document in the development stage. Advance planning ensures that these additional reviews do not delay the land exchange process.

B. When a Binding Exchange Agreement is Required

Entering into a Binding Exchange Agreement is optional unless hazardous substances are known or believed to be present on the non-Federal land. Where that is the case, the regulations (43 CFR. 2201.7-2(a)) require that a Binding Exchange Agreement be utilized to address the responsibilities for removal, indemnification or other remedial actions on the non-Federal lands prior to completing the land exchange.

C. Optional Uses for Binding Exchange Agreements

Absent a Binding Exchange Agreement, there is no legal obligation or enforceable right under the ATI requiring any or all of the parties to complete the exchange. To protect the significant investment of time and money made by the parties in the exchange process, a Binding Exchange Agreement may be utilized to secure commitments in the final stages of exchange processing. Because a Binding Exchange Agreement may subject the parties to legal and monetary commitments, they must be used with caution and should be explicit in their description of the conditions of the agreement. It is recommended that close coordination occur with the Field and/or Regional Solicitor when developing a Binding Exchange Agreement. The following is a listing of examples of some other situations that may support the need for a Binding Exchange Agreement:

1. Concerns over Continued Commitment to Complete the Exchange - A Binding Exchange Agreement may be appropriate in those instances where there is a desire to ensure that exchange parties remain committed to completing the transaction or to ensure that the status of the title to the non-Federal property remains status quo. This could be the case in those situations where

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reaching an agreement on value was tenuous or where there are multiple parties who need to execute conveyance documents, e.g., divided interests in property held by various family members.

2. Locking Values - A Binding Exchange Agreement can include a provision to fix the agreed-upon land values. This may be appropriate if appraisals are nearing the end of the validity period, if there is the potential for a protracted time period between the decision and closing related to protest and appeal or title clearance issues.
3. Securing Final Commitments - A Binding Exchange Agreement can be used in facilitated assembled exchanges to assist the facilitator in securing final commitments from various parties being represented in the exchange. Similarly, the Binding Exchange Agreement is often a tool that assists exchange parties in removing mortgages and other financial encumbrances from the non-Federal properties or in securing financial arrangements for equalization payments.
4. Phased Closings - In phased closings, Binding Exchange Agreements can be beneficial in securing the necessary commitments for the secondary phases of the land exchange process. In many cases, phased exchanges involve multiple decisions. Because the exchange parties cannot execute a binding exchange agreement until, issuance of a decision (see 43 CFR 2201.7-2(a)), it should be clear that a binding agreement would only be applicable to the phase(s) for which a decision has been issued, and could not apply to any subsequent phases for which decisions have not been issued. Any commitments for future phases should be incorporated into the ATI.
5. Establishing Contractual Agreements - Binding Exchange Agreements can also be utilized to establish contractual agreements that survive exchange closing. Examples may include establishing commitments for removal of personal property and phased termination of land use authorizations such as private grazing or agricultural leases, etc.

D. Content Requirements for Binding Exchange Agreements

1. Regulatory Required Items - A Binding Exchange Agreement must include the following four regulatory requirements (43 CFR 2201.7-2):
 - a. Identification of the parties, a description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, the amount of any necessary cash equalization, and all other terms and conditions necessary to complete the exchange;
 - b. The terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal land;
 - c. A description of the goods and services and their corresponding costs for which the non-complying party is liable in the event of failure to perform or to comply with the terms of the exchange agreement; and
 - d. The agreed upon values of the involved lands.

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2. Additional Required Items - The agreement must also include the following five provisions, which establish the conditions under which the agreement is legally binding:
 - a. Acceptable title can be conveyed;
 - b. No substantial loss or damage occurs to either property from any cause;
 - c. No undisclosed hazardous substances are found on the involved Federal or non-Federal land prior to conveyance;
 - d. In the event of a protest, or of an appeal from a protest decision under 43 CFR Part 4, a Decision to approve an exchange pursuant to 43 CFR 2201.7-1 is upheld; and
 - e. The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

E. Failure to Perform

If either party to the agreement fails to act or comply with the Binding Exchange Agreement, the non-complying party will be liable for those exchange costs incurred by the other party subsequent to the execution of the agreement. Illustration 10-1 is an example of a Binding Exchange Agreement.

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Illustration 10-1 BINDING EXCHANGE AGREEMENT

THIS LAND EXCHANGE AGREEMENT is made this ____ day of _____ 20__, pursuant to Section 206 of the Act of October 21, 1976 (90 Stat. 2756) and the regulations at 43 CFR 2201.7-2, between the UNITED STATES OF AMERICA, acting through the authorized officer of the Bureau of Land Management, hereinafter styled the "BLM", and (full corporate name or legal name of the private individual), hereinafter called the non-Federal Party.

In consideration of the mutual agreements contained herein, the parties agree as follows:

1. The non-Federal party will convey to the United States of America by general warranty deed free of lien or encumbrance, except as otherwise provided herein, the real estate and all interest therein, as described in Exhibit A consisting of ____ pages attached hereto and made a part hereof. The value of the involved land is \$ _____.
2. In exchange therefore the United States of America agrees to convey to the non-Federal party, by patent issued by the Department of the Interior, the real property and all interest therein, described in Exhibit "B" consisting of ____ pages attached hereto and made a part hereof. The value of the involved land is \$ _____.
3. Title to the non-Federal and Federal land will be transferred simultaneously through escrow in accordance with the escrow instructions described in Exhibit "C" attached hereto and made a part hereof.
4. The values identified above will remain fixed until consummation of the land exchange.
5. To equalize the values of the lands involved in the exchange, a sum of \$ _____ will be deposited into escrow by (BLM/non-Federal party) and released to the other party upon consummation of the exchange.

The parties agree that the Non-Federal party will be responsible, if necessary, for removal, indemnification, or other remedial actions concerning any hazardous substances found on the involved non-Federal land.

Optional Provisions

(if needed)

Conditions

This Agreement is legally binding on both the Non-Federal party and the BLM subject to the terms and conditions herein identified and provided;

1. Acceptable title can be conveyed to the United States of America.
2. No loss or damage occurs to either property from any cause.

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3. No undisclosed hazardous substances are found on the involved Federal or non-Federal land prior to conveyance.
4. The decision to approve an exchange is upheld in the event of a protest or appeal.
5. The parties agree through mutual consent to terminate agreement.

Failure to Perform

In the event of failure to perform or comply with terms set forth in this Agreement, the non-complying party will be liable for all costs borne by the other party as follows:

Description of Goods and Services and corresponding costs-

Execution

IN WITNESS WHEREOF, the parties hereto have signed their names.

THE UNITED STATES OF AMERICA
Department of the Interior
Bureau of Land Management

By _____ Date _____
State Director

Non-Federal Party

By _____ Date _____

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Chapter 11 - Assembled Land Exchanges

A. Introduction and Definitions

This chapter defines assembled land exchanges, addresses how they are to be used and identifies assembled land exchange process and documentation requirements and restrictions. The regulations provide that whenever the authorized officer determines it to be practicable, an assembled exchange arrangement may be used to facilitate an exchange and to reduce costs (43 CFR 2201.1-1(a)). Properly defining assembled exchange proposals is essential to ensuring that all parties in the assembled exchange are properly represented, all parcels are properly valued, and all transactions or phases are planned and sequenced in a manner consistent with land exchange requirements.

The authority to conduct assembled land exchanges is a tool available to the BLM to consider in improving Federal land ownership patterns and in making Federal land available to support community growth and development. Assembled land exchanges may facilitate the conveyance of multiple isolated and relatively small sized parcels of Federal land in exchange for non-Federal land that benefit important resource management objectives. Through the participation of land exchange facilitators, the assembled land exchange process also allows exchanges to proceed where non-Federal land owners are not interested in exchanging for other Federal land. Assembled land exchanges can be a cost effective tool in the consolidation of checkerboard land ownership patterns found in the western states.

The definition of an assembled land exchange under the regulations at 43 CFR 2200.0-5(f) and 43 CFR 2201.1-1(b) contains provisions for ***consolidating multiple parcels*** of land or interests in land and for completing an assembled exchange ***in one or more transactions over time***. When multiple parcels are assembled for exchange, it is necessary to determine how the assembled parcels and ownerships will be defined for valuation purposes (43 CFR 2201.3-2(5)). See Section F.2 of this chapter.

B. Assembling Multiple Parcels and/or Multiple Ownerships

The first element in defining assembled land exchange proposals relates to multiple parcels. An assembled exchange proposal may include multiple parcels under common ownership or multiple parcels under different ownerships. By this definition, any exchange beyond a traditional two-party exchange as defined in Chapter 1.C.1 is an assembled exchange. Most land exchange proposals involve multiple parcels and are therefore assembled exchanges. The identification of assembled parcels or interests in land may occur either on the non-Federal or Federal side of the exchange proposal or may occur on both sides of the assembled land exchange proposal. The concept of how assembled parcels and/or assembled ownership interests are defined is critical in the valuation processes for assembled exchanges. It is very important for BLM staff and management to understand how miscommunication regarding the structure or configuration of lands in an assembled land exchange can affect their appraised value. It is BLM's responsibility to make it clear to all concerned that the conveyance of multiple parcels of Federal land to a single land exchange party does not suggest an intention to liquidate these lands or convey them at a wholesale or discounted price. Further information on assemble land exchange appraisal documentation is presented in Part F. 2 of this Chapter.

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An exchange proposal including several sections of State land would be one example of an assembled exchange proposal involving multiple parcels of non-Federal land with title held under a single ownership.

An assembled exchange proposal may also involve the conveyance of multiple parcels of land under multiple ownerships. An example would be an exchange proposal where two or more non-contiguous parcels, with title held by differing owners, are consolidated into one exchange to reduce processing costs.

C. Single Phase or Multiple Phase Assembled Exchanges

The second element defining assembled land exchange proposals relates to the timing or sequencing in completing the land exchange. Alternately, an assembled exchanges may be planned to be completed as a single transaction, with one closing and values equalized under the provisions of 43 CFR 2201.6. An assembled land exchange may also be conducted over a period of time in a series of phased closings, each phase not necessarily of equal value but adding up to an equal value exchange in the final closing. In phased assembled land exchanges a ledger is established to serve as the accounting mechanism that tracks the imbalance of land value conveyed in each phase. The imbalance reflected on the ledger must remain within 25 percent of the value of the Federal land conveyed and the ledger must be brought to a zero dollar balance within three years (43 CFR 2201.1-1(e) (2)). The three-year time period begins on the date of closing of the first transaction on the ledger. In addition, the total Federal land value used as the base for the 25 percent limit also ends with the three-year period. Further information related to use of a ledger in a phased assembled land exchange is provided in Section H of this chapter.

In situations where a phased assembled exchange is being contemplated for the acquisition of a single ownership, particular attention needs to be paid to potential effects the phased acquisition may have on the valuation process. Where phased acquisition is contemplated, the valuation analysis section of the feasibility report must address how the appraisal process will be applied in the phased acquisition of the ownership.

If the BLM is acquiring a single ownership using a blend of acquisition resources such as exchange lands and appropriated or other acquisition funding, the value must first be established for the whole property. Include an explanation in your ARRTS request when you expect the appraiser to allocate portions of the property to LWCF or another acquisition-funding source. This will allow the ASD to instruct the appraiser in the proper scope-of-work. The Acquisition Handbook (H-2100-1) contains further information on other important process requirements that must be considered in situations where multiple acquisition resources are being used in combination for acquiring a single ownership.

D. Cautions and Restrictions in Developing Assembled Land Exchange Proposals

An assembled exchange proposal must completely and definitively identify all the Federal and non-Federal land that will be considered in the exchange proposal. Only after an assembled exchange proposal is completely defined can consideration be given to the need for or benefits of processing the proposal in a series of phases over a period of time.

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An assembled exchange with multiple phases remains one exchange proposal processed under a parent serial number and case file, with a suffix added as appropriate to differentiate each phase. The environmental documentation and public interest determinations for a phased exchange must address all of the Federal and non-Federal land in the entire assembly. Decision documents for phased assembled land exchanges, like decisions for all other exchange proposals, must be based on completed environmental analyses, appraisals, and other supporting studies.

All documents related to considering assembled exchange proposals must clearly identify that the assembled exchange regulatory provisions and processing mechanisms are being utilized as a part of considering the proposal. The list of documents that should describe the process includes; the feasibility report, ATI, NOEP, environmental documentation, decision(s) and NOD(s).

To minimize complexity and afford more effective public involvement, the authorized officer should strive to complete assembled exchanges as a single transaction. However, when an authorized officer determines there is a benefit from or need to process the exchange proposal in a series of phases there needs to be an increased commitment to ensuring that the administrative record adequately documents the entire exchange proposal. Doing so may require extensive amendments, supplements and tiering of public notices, environmental analyses, and appraisals.

An authorized officer may be interested in the potential cost reduction and facilitation benefits of assembled exchange processing to assist in pursuing project-wide acquisition goals and plan decisions for land tenure such as those frequently identified for Wilderness areas, Wild and Scenic River Corridors, and other special management areas. In these situations, the authorized officer must carefully design the assembled exchange proposal to include complete identification of specific Federal and non-Federal parcels being considered under the proposal. All aspects of the assembled exchange process including public notice, environmental documentation, and public interest determinations must address the entire scope of the project proposal in a comprehensive manner.

Assembled land exchange proposals may be amended by adding or deleting lands for the purpose of equalizing the land exchange pursuant to provisions under 43 CFR 2201.6. However, the amendment must be made for the specific purpose of equalizing and completing the final phase of the exchange and not to modify or expand the scope or objectives of the original proposal. Where an amendment is warranted, the additional lands being considered must be addressed in amendments to the feasibility report, ATI, NOEP, environmental document, and established review requirements.

A Field or State Office may be involved in processing several assembled land exchange proposals involving the same exchange facilitator or non-Federal party. Each assembled land exchange proposal must be treated distinctly and separately and Federal and non-Federal land and their values may not flow from proposal to proposal or ledger to ledger simply because the exchange facilitator is common to the proposals. This does not preclude consideration of assembled land exchange proposals encompassing multiple jurisdictions providing such proposals are considered independent of other proposals that may be under consideration.

The BLM may consider exchange proposals in situations where multiple ownerships or interested parties wish to become involved in an assembled land exchange with the BLM. Under this type of

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arrangement, the BLM serves to facilitate bringing the various ownership or interests together for the purpose of completing an exchange. However, the BLM does not represent any interest in the transaction other than its own. In these situations, the roles and responsibilities of all parties or interests participating in the exchange are to be identified in the feasibility report and each party must enter into the ATI and other appropriate related exchange documents. Caution must be observed with the use of phased closings for multiple-party assembled land exchanges to preserve the exchange nature of the transactions. In most cases it is preferable to complete these multiple-party exchange transactions with a single simultaneous equal value closing.

E. The Role of Facilitators in Assembling Multiple Parcels or Multiple Ownerships

Exchange proposals involving an assembly of multiple parcels, multiple ownerships, and/or multiple interests typically involve an exchange facilitator who formally represents by contract, option or agreements various assembled interests.

All exchange process documentation, beginning with the feasibility report for the assembled exchange proposal and carrying through to the land exchange decision, must identify that the exchange is being proposed strictly between the BLM and the facilitator. The BLM has no formal relationship, agreement or involvement with the parties or ownerships represented by the facilitator including any contractual or financial arrangement and escrow agreements between the facilitator and the parties they represent. However, to ensure the public interest is being fully protected, the ATI for all facilitated exchange transactions must contain a “Land Exchange Full Disclosure Provision.” The provision²¹, shown below is also found in the Policy Section of Chapter 1 and in Chapter 4.

Land Exchange Full Disclosure Provision:

“By entering into this Agreement, the non-Federal party agrees to fully disclose to the authorized officer all contracts, options and other related agreements with landowners represented by the facilitator. The non-Federal party also acknowledges that the BLM and its authorized representatives have the right to inspect the records of the non-Federal party to verify the disclosure. The non-Federal party should be prepared to make these records available within a reasonable period of time upon request, but no later than 14 days after the request. The BLM has the right to exercise this disclosure provision for seven years after the last transaction of the exchange is complete. All confidential business information and all information covered by the Privacy Act will be protected to the extent allowable by Federal law.”

The BLM policy (see Chapter 1) for disposal of Federal parcels with known or suspected competitive market interests is that sale, pursuant to the authority found in Section 203 of FLPMA, be given the first consideration. An evaluation of the disposal options and alternatives considered for such parcels must be addressed in the land exchange feasibility report. Facilitated assembled land exchange processes are not conducive to or a suitable substitution for competitive disposal processes.

21 The full disclosure provision may be appropriate for use with all non-Federal parties, as they may have entered into such arrangements even if a facilitator is not used.

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The BLM should provide exchange facilitators with information on known exchange interests such as adjoining landowners, prior public expressions of interest, and information on authorized land users. This type of information assists exchange facilitators in the identification of parties potentially interested in participating in assembled land exchanges. Facilitators can use the information to match up acquisition and disposal interests in assembled exchange proposals.

Exchange facilitators generally assess the parties they represent in the process a fee typical of customary real estate business practices. Facilitators may also assess the parties being represented, all or a portion of the land exchange processing costs assigned to the non-Federal exchange party.

The BLM may not dictate requirements or preferences for how an exchange facilitator chooses to resolve conflicting interests in Federal land that may occur if more than one adjacent landowner is interested in participating in the assembled land exchange. However, potential competitive interest in any Federal lands proposed for exchange disposal should have been identified, and the sale option evaluated, during the initial review and feasibility analysis stages (see Chapters 1 and 2). It is essential that any potential competitive interest in lands proposed for exchange is evaluated at these earlier stages to avoid a situation where a facilitator or non-Federal party identifies a competitive process later in an exchange. Facilitators need to ensure that the processes they use clearly distinguish between mechanisms used to establish land value and other fees and costs charged to the parties for participation in the exchange process.

F. Additional Documentation and Processing Requirements for Assembled Land Exchanges

In addition to the documentation and processing requirements outlined in other chapters of this Handbook, the information that follows summarizes additional process requirements specific to processing assembled land exchange proposals.

1. Feasibility Reports and ATIs - The regulations specify that assembled land exchange arrangements must be documented in the ATI (43 CFR 2201.1-1(c)). BLM policy is that the feasibility report and ATI at a minimum must address the following items:
 - a. Feasibility reports must:
 - Identify all Federal and non-Federal parcels and/or ownerships being assembled.
 - Document how the assembled arrangements will facilitate the exchange and/or reduce costs.
 - Address in the valuation analysis section any appraisal considerations for valuing multiple parcels and/or ownerships (see Section 2. below).
 - If anticipating completion of the exchange in phases provide a description of how the NEPA document will address cumulative impacts.
 - b. The ATI for assembled exchanges involving multiple ownerships or ownership interests must:
 - Identify all parties to be involved and how each party will participate in exchange

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processing.

- When completing assembled land exchanges in phases identify the anticipated number and timing of transactions.
 - Include a description of the strategy for equalizing values in the assembled exchange (refer to Section G. below).
 - When you anticipate the use of a ledger identify how any imbalances would be secured (refer to Section H. 2. below).
 - Identify the anticipated manner in which title will pass, including requests for direct deeding to the United States and/or for issuance of multiple patents.
 - Include a provision, if applicable, for estimating separately the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange. If included, the provision must also indicate that the Federal land will be valued in a similar manner.
 - Include the “full disclosure” provision shown previously in Section E. of this chapter.
2. Assembled Exchange Appraisal Documentation - In appraising the market value of properties involved in an assembled land exchange pursuant to the 43 CFR 2201.3-2, the appraiser shall:

“Estimate separately, if stipulated in the Agreement to Initiate, the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange. In this case, the appraiser shall estimate the value of the Federal and non-Federal properties in a similar manner.”

Where a stipulation to value the ownerships separately is included in the ATI, it must also indicate that the Federal land will be valued in a similar manner.

The BLM may not agree to configure, group or assemble Federal lands for conveyance in a manner that is detrimental to the public interest or in a manner that would appear to represent a breach of fiduciary responsibility.

The options and alternatives for valuation of the Federal and non-Federal land as a whole, separately, or some combination thereof must be carefully and thoroughly discussed (Valuation Analysis) with the ASD in the development of an assembled exchange feasibility report and ATI. These valuation analysis discussions must include the ownerships and parcels to be appraised, intended parcel conveyances (separate patents or known plans to convey the former Federal lands to individual property owners), market factors such as highest and best use determination, parcel size, location and assembled exchange valuation requirements. It is BLM’s responsibility to provide a copy of the draft ATI or other clearly written communication of these factors to the ASD as an attachment to the Appraisal Request. Any subsequent addition of land to the exchange

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proposal should be appraised under the same guidance and principles.

The above provision ensures that the structuring of the land exchange or the method of valuation does not adversely affect the values of the Federal and non-Federal land. (Also, see Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)

G. Assembled Exchange Equalization

“The assembled exchange arrangement may be terminated unilaterally at any time upon written notice by any party or upon depletion of the Federal or non-Federal lands assembled. Prior to termination, values shall be equalized....” (43 CFR 2201.1-1(f)). The guidance for equalizing value in land exchanges, included assembled exchanges, is covered in Chapter 7 in this Handbook and 43 CFR 2201.6.

Where multiple phases are contemplated in assembled exchange processing, the phases should be arranged in a manner that will reasonably protect the public interest should a decision be made by either party to terminate the agreement. Protecting the public interest involves minimizing the amount of time and the amount of outstanding value imbalance on an assembled exchange ledger.

In the first transaction of an assembled land exchange, there must be a conveyance of both Federal and non-Federal land. In subsequent transactions, all reasonable efforts should be made to continue to convey both Federal and non-Federal land in order to minimize imbalances in value reflected on a ledger. Where there is a need to convey only Federal or non-Federal land, the administrative record should document how the conveyance served to expedite and facilitate equalization of value on the ledger and completion of the exchange.

Cash equalization waiver provisions of 43 CFR 2201.6 may only be used in conjunction with the final transactions of an assembled exchange and the termination of the ledger (43 CFR 2201.1-1(e)(4)). Refer to the following section of this chapter for further information related to the use of cash equalization and cash equalization waivers in ledger management.

H. Establishing and Managing Ledgers

The regulations at 43 CFR 2201.1-1(e) provide that: *“If more than one transaction is necessary to complete the exchange package, the parties shall establish a ledger account under which the Federal and non-Federal land can be exchanged.”* The ledger is an accounting mechanism only for tracking the differential in dollar value of lands conveyed in a series of transactions.

A ledger reports each land exchange transaction by date, value of Federal land, value of non-Federal land, and the difference between the values in each transaction. Lands acquired by means other than a land exchange transaction (i.e., acquisition or donation) are not reported on the land exchange ledger. Entries to a ledger reflect land value conveyed to date and imbalances in value to be reconciled in subsequent exchange transactions. Amounts posted to a ledger should not be referred to or considered as a cash equivalent account, debt or credit. A ledger imbalance may only be reconciled by completing a subsequent exchange transaction or under the exchange equalization

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provisions of 43 CFR 2201.6.

1. Ledger Management - Establishing a ledger requires the approval of the State Director. The approval is generally provided for in conjunction with approval of the feasibility report, but may also be provided for in a separate memorandum or in an amendment to the ATI. All assembled land exchange ledgers are established and managed by the State Office. In determining the need to establish a ledger under the terms of an assembled land exchange agreement, consideration must be given to equalizing exchange transactions with adjustment of acreage before allowing an imbalance to be reflected on a ledger. This is especially true when there is a potential for the imbalance to provide windfall benefits to non-Federal parties in rapidly appreciating markets. In this case, a better solution may be to reduce acreage rather than use a ledger. A written justification is required for each entry of an imbalance to the ledger. This determination should also address actions taken to minimize the period of time over which there is an imbalance.

When a ledger is used, the authorized officer must:

- a. Assure the value difference of the Federal and non-Federal land conveyed does not exceed 25 percent of the total value of the Federal land conveyed up to and including the current transaction.
- b. Assure the values of the Federal and non-Federal lands conveyed are balanced (equalized) with land and/or cash equalization within 3 years from the date of closing of the first transaction on the ledger.
 - (1) Cash equalization may be used to reconcile an imbalance in conjunction with completing any phase in the exchange.
 - (2) Cash equalization must adhere to the 25 percent limitation at 43 CFR 2201.6. The 25 percent limitation is calculated based on the value of the Federal land conveyed in the current and previous phases. If cash equalization is accepted in multiple phases, caution must be used not to exceed the 25 percent limitation for the exchange.
 - (3) When an assembled land exchange ledger is equalized and closed, all exchange balances are returned to zero. If an additional ledger is established for continued exchange processing, the ledger is considered new and does not consider the value of land conveyed in the exchange under the prior ledger. The 25 percent limitation is also readjusted so as not to include the total Federal land value from the prior ledger.
- c. Determine if it is necessary to secure outstanding value imbalances shown on the ledger by requiring the non-Federal party to post a performance bond or other approved form of surety. Ledger documentation must include a statement indicating if the imbalance is secured (see Section 2. below).
- d. Ensure that the ledger is managed and maintained in the State Office, with a copy of the current ledger placed in the official case file.

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- e. Obtain agreement of the amount of the imbalance reflected on the ledger from the facilitator. Agreement may be documented by either signatures on the ledger or in a letter or memorandum addressing agreement with the imbalance posted to the ledger.
 - f. Where compensation of costs is applied, note on the ledger how the amount of compensation reduced the exchange equalization threshold.
 - g. Utilize the standard ledger format shown in Illustration 11-2. The standard format has been developed to assist with oversight and monitoring of assembled land exchange practices.
2. Guidelines for Determining the Need to Secure Ledgers - The State Director must make the determination on the need to secure a ledger imbalance as a part of approving the establishment of the ledger. The determination must be made in writing and included as a part of the official case record. The determination should be reviewed and updated in conjunction with each posting to the ledger. The documentation also must be reviewed and updated 12 months after posting if a subsequent transaction has not been posted in that time period.
- a. Imbalances in Favor of United States. The following factors should be considered in determining the need to secure ledger imbalances:
 - (1) The amount of value imbalance and the time before a subsequent exchange transaction is projected to occur to reduce or eliminate the imbalance.
 - (2) The expected ratio of time the imbalance will favor the BLM vs. the non-Federal party over the life of the ledger/exchange.
 - (3) The ability of the non-Federal party to equalize the exchange with cash should the exchange unexpectedly need to be terminated. This factor should include consideration of the relative financial stability of the non-Federal party as it relates to protecting the public interest in the need to secure an imbalance.
 - (4) The number of assembled exchange agreements or ledgers that exist with the same non-Federal party within the state.
 - (5) The amount of exchange workload the non-Federal party is handling without compensation, reflecting the non-Federal party's investment in ensuring timely completion of the exchange package.
 - (6) Existence of a binding exchange agreement securing commitments to complete the exchange.
 - (7) The nature of the real estate market and the potential for the imbalance to provide a windfall benefits to the non-Federal parties in rapidly appreciating markets.
 - b. Imbalances in Favor of Non-Federal Parties. To avoid Anti-Deficiency Act (31 U.S.C.) concerns State Directors must use caution in approving imbalances in favor of a non-Federal

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party as there are a number of factors that may limit the ability of the BLM to provide suitable land or cash to equalize assembled land exchanges. Factors that may support ledger imbalances in favor of non-Federal parties:

- (1) Availability of LWCF or other funds that could be utilized to equalize ledger imbalances.
 - (2) Availability of exchange base and capability of resources to rapidly pursue utilization of additional lands to equalize a ledger imbalance.
 - (3) Willingness of the non-Federal party to waive equalization or consider donations under the authority of Section 307 of FLPMA.
3. Methods for Securing Ledger Imbalances - If the BLM makes a determination that a ledger imbalance is necessary and that the imbalance needs to be secured, one of the following approved methods must be utilized. The BLM may not retain funds in an escrow account as a means of securing a ledger imbalance. Consult as necessary with your Regional Solicitor and the BLM Business Center concerning use of these methods for securing ledger imbalances.
- a. Approved Performance Bonding Options. A performance bond is similar to an insurance policy obtained by the non-Federal party as a guarantee of acceptable performance for equalizing a ledger imbalance. The bond security may be in the form of negotiable Treasury notes, bills, or bonds, or cash bonds controlled by the non-Federal party and offered directly to the authorized officer. More often, the bonding agreement is secured by the guarantee of Surety Company who agrees to be liable for the non-Federal party's performance. In all cases the bond must consist of a bonding document and some form of security. The original executed documents should be retained by the BLM in a State Office file and should reference the location of the file, or a copy of the bond should be kept in the case file. See BLM Rights-of-Way Manual 2801.41 for additional information on bonding.

The following guidelines must be adhered to when accepting security for bonds:

- (1) The funds must be guaranteed and negotiable at full value by the Government.
 - (2) The funds must be accessible to the Government at all times.
 - (3) The funds must not be available to the non-Federal party without a release from the Government.
- b. The acceptable forms of bond security are cash or personal bond, negotiable U.S. Treasury bonds, notes, or bills and a bond of corporate surety. Securities in the form of stocks, certificates of deposits, and bank accounts from which the non-Federal party can withdraw funds are not acceptable forms of bond security.
 - (1) Cash Bonds or Personal Bonds. Cash or a cash equivalent payable to the BLM secures these bonds. The cash received must be equal to the required bond value and deposited into a suspense account (deposit account 14X6500) until the bond is terminated or if

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default has occurred. The Personal Bond, Cash and Book Entry Deposits form (Illustration 11-1) and power of attorney, if a separate document, must be originally executed by the non-Federal party and witnessed.

- (2) Negotiable U.S. Treasury Bonds, Notes, or Bills (known as Book Entry Deposits). These include Treasury notes, bills, or bonds in the form of a book entry deposit from a financial institution (referred to as a bank) to whichever Federal Reserve Bank services their account. The non-Federal party must pay any charges levied by the Federal Reserve Bank or the Treasury Department. The necessary steps to arrange for security in the form of book entry deposits are as follows:
 - (a) The party required to post a bond should contact a commercial bank and inform them they wish to purchase a specific negotiable security to satisfy a BLM bonding requirement. The purchase price or market value of the security must be equal to or exceed the required bond amount. The negotiable security is transferred to a U.S. Government Account under the commercial banks ABA number with the Federal Reserve Bank after the BLM's Negotiable Securities Custodian gives authorization. Contact the BLM's Negotiable Security Manager, at the BLM Business Center (BC-621) if you have any questions.
 - (b) The non-Federal party providing the negotiable security must then complete a power of attorney form which authorizes the BLM to use the funds in case of default on the equalization of the imbalance.

The non-Federal party must furnish the information listed below:

- i. Name, address, and social security or taxpayer ID
- ii. Serial number of the exchange
- iii. The type of security purchased (bond, note, or bill)
- iv. The par amount of the security (\$25,000, \$50,000, etc.)
- v. The maturity date of the security
- vi. The Committee on Uniform Securities Identification Procedures (CUSIP) number of the security
- vii. The name of the depository financial institution
- viii. The mailing address of the depository financial institution
- ix. The depository financial institution's nine-digit ABA number
- x. The name of the Federal Reserve Bank servicing the depository financial institution

If the depository financial institution uses a correspondent financial institution to hold Treasury securities, the information requested in items 4 through 10 above must be provided for the correspondent financial institution.

When the power of attorney is completed, and the BLM is advised that the book

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entry deposit has been made, contact the BLM Business Center and provide the information requested above. Follow the call with a confirmation memorandum. The Business Center will receive a document evidencing the deposit and identifying the security. A separate case file will be created for each security. The submitting office will be notified upon receipt of the deposit advice.

- (3) Bond of Corporate Security. The surety company must be approved by the U.S. Treasury to underwrite Federal bonds. The bond form must be affixed with the seal of the surety company and accompanied by a power of attorney from the surety company for its agent. The non-Federal party must be provided with a copy of the ATI and the ledger imbalance provisions to present to the surety company prior to the instrument's issuance.
- c. Release of Bond. A bond may be released only when it has been determined that title to the non-Federal land has been accepted and the ledger imbalance has been reduced or eliminated.

Upon the termination of a cash bond, the non-Federal party should be sent the power of attorney, which was made payable to the BLM, and a letter acknowledging release of liability under the bond. By reference to the original accounting advice, the State Office requests that a refund be processed to the non-Federal party.

Upon the termination of a Treasury bond, the State Office should notify the Business Center on the release of liability so they can return the Treasury security to the non-Federal party.

Upon the termination of a Corporate Surety Bond, the authorized officer must notify the surety company that the non-Federal party has fulfilled their obligations and request cancellation of the surety company liability.

- d. Redeeming Bonds for Failure to Perform. When it is determined that the non-Federal party has failed to equalize the imbalance, action should be taken to protect the BLM's interests. The non-Federal party should be notified by certified mail, with a copy to the surety company, if applicable, of the impending default and be given a reasonable period of time in which to take corrective action. If the default is not cleared to the BLM's satisfaction, action should be taken to collect the bond security, including the expense of the corrective action and the equalization amount. When the bond is placed through a surety company, the BLM will request payment by detailing the nature of the default. Bonds secured by cash can be recovered by transferring the cash bond from the suspense account to the appropriate deposit account. When bonds are secured by Treasury securities, the Business Center is requested to obtain the proceeds from such securities and deposit the money into the appropriate account.

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Illustration 11-1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

PERSONAL BOND, CASH AND BOOK ENTRY DEPOSITS

Land Exchange Serial Number _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____ herein referred to as principal, is held and firmly bound unto the United States of America in the sum of dollars (\$ _____) lawful money the United States in the form of a cash bond (including a book entry deposit), for the payment of which, well and truly to be made, principal does hereby bind themselves, their heirs, executors, administrators, successors, or assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, If the said principal or the principal's heirs, executors, administrators, successors or assigns, shall fully comply with the said terms and conditions then, and in that event, the obligation shall be null and void; otherwise it shall remain in full force and effect.

The principal does hereby appoint the Secretary of the Interior as their attorney, for the principal and in the principal's name to collect or transfer the said bond above described pursuant to authority conferred by Section I of the Act of July 30, 1947 (61 Stat. 646; 6 U.S.C.15) to ensure the faithful performance of any and all terms, provisions and requirements as set out in the Agreement to Initiate for the land exchange and it is agreed that, in case of any failure in the performance of the provisions, the said attorney shall have full power to collect said bond or any part thereof. The interest, if any, accruing upon said bond as above stated, in the absence of any default in the performance of any of the terms, conditions or stipulations of the bond, shall belong to the principal. The principal hereby for themselves, their heirs, executors, administrators, and successors, ratifies and confirms whatever the principal's said attorney shall do by virtue of these presents.

In Witness Whereof, we hereunto set our hands and seals this _____ day of _____, 20__.

--

(Signature)

Signatures of Witnesses

Addresses

of Witnesses

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Illustration 11-2

Replaced by IM 2010-122

_____ State Office

Assembled Land Exchange Ledger

Project, Field Office, Transaction Date	Name & Serial Number	Patent or Deed Number	Non- Federal Acres Acquired by BLM	Value of Non- Federal Land Acquired by BLM	Federal Acres Conveyed by BLM	Value of Federal Land Conveyed by BLM	Compensation of Cost	Equalization Payments - Federal/ Non-Federal	25 % Value Difference Limit*	Value Difference

Carryover Balance: \$ XX, XXX.XX of unsecured imbalance in favor of the _____ will be applied to the next transaction/phase of the _____ land exchange (serial number).

* Pursuant to 43 CFR 2201.1-1 (e), the value difference between the Federal and Non-Federal lands may not exceed 25 percent of the total value of the Federal lands conveyed, which is \$ XXX, XXX.XX for this exchange. This ledger does not exceed the 25 percent value difference limit.

The undersigned parties agree that the entries shown on this ledger are correct as of this date.

Bureau of Land Management

Non-Federal Party

(Print State Director Name)

(Print Name of Party and Entity)

Date

Date

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Chapter 12 Legislated Land Exchanges

A. Introduction

Legislation is sometimes enacted to provide statutory authority for interstate land exchanges or to provide Congressional direction regarding a specific exchange proposal. The following guidance is designed to ensure an effective response to Congressional contact regarding legislative land exchanges. The procedures also address other common situations in which the BLM works with Congress concerning land exchanges. (See Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)

B. Providing Factual Information

Most requests for information from Congress (routine requests for maps, survey notes, brochures, etc.) may be handled directly at the Field or State Office. However, if there is a possibility the requested information is for a future hearing or to develop a legislated land exchange notify the Washington Office, Legislative Affairs Group (WO-620). If you begin working on such a request, please provide a copy of the information you prepare to WO-620 before sending to the requesting congressional office. Work through the appropriate State Office staff to contact WO-620, if there are questions about whether to refer a request to the Washington Office or handle it yourself.

C. Responding to Legislated Land Exchange Requests

Request for BLM assistance in the preparation of a legislative land exchange must be coordinated through the Washington Office, Legislative Affairs Group (WO-620). This assistance may be provided only with Departmental and, when necessary, Office of Management and Budget (OMB) clearance. The BLM's participation in development of land exchange legislation is sometimes initiated via contact between congressional staff and the BLM Field or Washington Office program staff. If so, the Legislative Affairs Group needs to be notified as soon as this type of discussion begins.

Congressional staff members often ask the BLM for formal or informal comments on a legislative land exchange proposal. Regardless of where the request is received (Field, State or Washington Office) the BLM response must go through the Department for approval. The Legislative Affairs staff is responsible for coordinating Departmental review of the BLM's comments for consistency with Administration policy. If responses, including draft legislative language, are sent directly to Congress without this review, the BLM runs the risk of taking a position which is in conflict with Administration policy.

Legislated land exchanges have considerable variability in the way they specify what will be exchanged, whether NEPA analysis will be conducted, appraisal requirements, etc. and must therefore be approached individually. In addition, the time allowed for completion of the exchange may affect the applicability of other statutory and regulatory requirements. However, some common requirements of land conveyances not typically mentioned in legislation, such as hazardous materials assessments, title standards, and certificates of inspection and possession may still need to be addressed.

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In many instances, land exchange legislation contains direction to complete transactions within a relatively short timeframe. To avoid conflict with these Congressional directives for completing transactions the BLM Washington Office does not normally issue specific policy and guidance outlining the steps to be taken to process individual legislative land exchanges. However, State Directors may request specific guidance, as needed. It is also advisable to consult with your Regional Solicitor regarding whether or not “standard” processing actions (NEPA, etc) do or do not apply in exchanges authorized by legislation.

D. Other Land Exchange Related Congressional Relations

Examples of other potential Congressional contacts regarding land exchanges include:

1. Hearings and Testimony. Requests to testify at hearings concerning land exchanges, either in Washington or in the field, must be coordinated with the Department through WO-620. The Department has established procedures with respect to hearings with which BLM must comply. For example, the Department will only testify on legislation that has been introduced, not on draft legislative proposals, and it will not testify with less than one week's notice of a hearing. Therefore, any notification (formal or informal) of a proposed hearing must be shared immediately with WO-620 so that BLM and the Department can have the maximum amount of time possible to decide if we will testify, who should testify, and to prepare testimony.
2. Meetings with Members and Staff. The WO-620, Legislative Affairs staff provides assistance in arranging such meetings, including those requested by Congress and staff and those initiated by the BLM. All meetings in Washington must be coordinated with WO-620.
3. Correspondence. Mail concerning land exchanges from Members of Congress or other elected officials addressed to field officials or assigned to the field for response (e.g., letters to the Director or departmental officials) often concerns routine public information matters. Such inquiries may be answered directly, without need for WO review. However, when the subject matter involves stating or clarifying BLM or Administration policy (especially when a recent policy change has occurred), the responding office must coordinate the response with the appropriate W.O. directorate. This may result in informal or formal W.O. review of draft correspondence, as appropriate. In rare instances, W.O. may direct that all correspondence related to a particular land exchange issue be reviewed in W.O. prior to its transmittal. In addition, the field needs to consult with the W.O. in cases where it believes that the response should originate in the W.O. or the Department.
4. Lobbying Activities. The Department provides guidance concerning what may and may not be done regarding the use of Interior appropriated funds for lobbying activities. This guidance is on the Department's ethics Web site (www.doi.gov/ethics) and should be reviewed by all BLM employees. Questions about whether planned communications to the public would be affected by these lobbying restrictions should be referred to the Solicitor's Office in Washington or the Regional or Field Solicitor.

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Chapter 13 Exchanges with State Governments

A. Introduction

Land exchanges are generally the preferred method for making land ownership adjustments with State governments. State exchanges are authorized under the same authority as private exchanges and are generally handled in the same manner. However, a number of States have agreements or memoranda of understanding with BLM State Offices that establish goals, objectives, or procedures for land exchanges with BLM. State exchange processes may vary somewhat from private exchanges regarding such items as title evidence, handling of existing authorizations, and use of ledgers.

Many States have requirements similar to the Anti-Deficiency Act (31 U.S.C.) and may have constitutional limitations on how land exchanges can be processed, especially dealing with cash equalization payments (either to or from the State).

B. Historic Importance of State Land Grants

The United States Congress provided for a grant of land to many of the states upon admission to the Union to provide the states with revenue to accomplish many important educational and public purposes. Depending on when Congress passed the respective state's Enabling Act these grants of land consisted of either section 16, or sections 16 and 36, or sections 2, 16, 32, and 36 within each township. Over the last century, Congress has established National Parks, National Monuments, National Wildlife Refuges, National Forest and other specially designated areas. The scattered nature of the original land grants resulted in the inclusion of state trust lands within these congressionally designated areas. The intermingled ownership pattern has led to numerous situations where state trust land management mandates and Federal land management mandates are in conflict. Land exchanges have been a valuable tool to resolve this land ownership dilemma.

The BLM recognizes that resolving these land ownership and management issues is an important public purpose and gives priority to the exchange of state trust lands out of areas designated by the federal government for special purposes. In general, the BLM has a goal of processing State land exchanges that meet public interest determination requirements (43 CFR 2200.0-6) within a two-year timeframe. To be successful, land exchanges must involve a commitment of all exchange parties to accomplishment of these mutually beneficial land transfers. The ATI for the land exchange should identify the commitment of resources necessary from the BLM, State Land Office and other land exchange parties to meet processing goals and objectives.

C. Variations from Standard Land Exchange Processing Procedures

1. Statewide Agreements and Memoranda of Understanding. The BLM encourages the development of statewide agreements with State governments to guide land tenure adjustment activities. A number of States have agreements or memoranda of understanding with BLM State Offices that establish goals, objectives, or procedures for land exchanges with BLM.

A Memorandum of Understanding (MOU) provides mechanisms for articulating each party's

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goals and the programmatic roles and responsibilities that are unlikely to change regardless of the specific details of any specific land exchange.

In conformance with DOI policy all Statewide Agreements and MOU's must conform with normal BLM exchange processes and follow DOI appraisal requirements (See Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)

2. Title Evidence. State Government has responsibility for providing clear and marketable title for the non-Federal land.

When a State conveys lands that were never in private ownership, one of the following certificates constitute acceptable evidence of title:

- a. A certificate from the proper State officer showing the lands have not been sold or otherwise encumbered by the State or if encumbered documenting the nature of each encumbrance.
- b. A certificate from the recorder of deeds or other proper officer under their official seal or by an abstractor or title company that no instrument purporting to convey or in any way encumber the land is of record or on file.

Additional responsibilities of State Government may include completing the Environmental Site Assessment to accepted (ASTM) standards and providing title evidence in a satisfactory form. Copies of all documentation related to this work needs to be provided to BLM for inclusion in the official case file.

3. Managing Land Exchange Ledgers. Chapter 11 provides an explanation of the process for management of assembled land exchanges ledgers. In most instances, State land exchanges will be conducted in conformance with these ledger management standards. Proposed variation from these standard procedures may be considered on a case-by-case basis with prior approval from the State Director, WO-300 and the Deputy Director
4. Public Interest Determination. Chapter 9 provides guidance on determination of public interest. In most instances, state land exchanges are conducted in conformance with these public interest determination procedures. Proposed variation from these standard procedures may be considered on a case-by-case basis with prior approval from the State Director, WO-300 and the Deputy Director.

As a reminder, the BLM is prohibited from considering land exchanges where the U.S. would acquire land for subsequent transfer to local or State governments under the R&PP Act (43 CFR 2740.0-6). In addition, the BLM must fully document the public interest factors of any land exchange proposal where the U.S. would acquire land for subsequent transfer under any other land disposal authority.

5. BLM / State / Private Three-Party Exchanges. When private parties have an interest in acquiring small-scattered parcels of BLM land and BLM has an interest in acquiring State Trust land

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inholdings, then a three-party exchange may be a very effective tool to employ. For example, in these transactions the private parties bring cash to the transaction equal to the value of the BLM land that they receive and the State brings land that the BLM will receive. After the transaction is closed the BLM ends up with the State Trust land inholdings, the private party ends up with the BLM land and the State ends up with the cash to purchase a replacement property in the future to generate income for their trust beneficiaries in fulfillment of their trust mandate.

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Chapter 14 - Exchanges Involving Other Federal Agencies

A. BLM's Role in Other Agency Exchanges

The BLM has two distinctly different roles when processing land exchanges benefiting other Federal agencies. This chapter addresses roles, responsibilities, and procedures for each of the two situations. The two situations include: 1) using public land in exchange proposals to benefit other agency acquisitions, and 2) providing support activities for other agency land exchange processing.

B. Land Exchanges Utilizing Public Land to Benefit Other Federal Agency Acquisitions

The BLM may assist other Federal agencies in the acquisition of non-Federal land through the exchange process when the transaction supports the mission of those agencies. The most prevalent examples are land exchanges benefiting the U.S. Forest Service, U.S. Fish and Wildlife Service and National Park Service. However, other Federal agencies may approach the BLM to consider exchange proposals involving the disposal of public land to acquire non-Federal land for that agency.

Key concepts that need to be considered in preliminary discussions related to exchanges benefiting other Federal agencies include:

- The exchange must be supported by a public interest determination.
- The regulations at 43 CFR 2200 and the policy and guidance contained in this Handbook and other applicable sources apply to considering and processing exchange proposals benefiting other Federal agencies. These requirements must be coordinated with the regulations, policy, and guidance of the benefiting agency.
- The BLM has the sole authority for approving all documentation.
- The ASD will conduct the appraisal process with funds provided by the benefiting agency.
- The benefiting agency must take responsibility for the costs and commitments involved in completing the exchange.
- Any transfer of funds between agencies requires an Interagency Agreement.
- Actions and processing requirements such as withdrawal and jurisdictional transfer that may be necessary concurrent with or following the acquisition of the non-Federal lands must be identified.

- C. Authority for Acquisitions Benefiting Other Federal Agencies - Section 206 of FLPMA provides the BLM authority to dispose of public land in an exchange where the public interest will be well served by the exchange. The criteria utilized in making a public interest determination are contained in Section 206 (a) of FLPMA. The criteria apply to public interest determinations regardless of the Federal agency benefiting from the acquisition. Additional information on public interest determination criteria is contained in Chapter 9, Section B.

Other Federal agencies requesting an exchange must provide documentation of their authority to acquire land. Questions related to acquisition authority should be addressed to the Regional or Field Solicitor.

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2. Developing the Exchange Proposal, Feasibility Report and Interagency ATI - The benefiting agency and the BLM jointly develop the land exchange proposal, feasibility report, and ATI incorporating the required information outlined in Chapter 2, 3, 4 and 5. These documents should ensure clear articulation of the roles, responsibilities, cost, and time frames for considering the land exchange proposal.
 - a. Exchange proposal and feasibility report. In support of the exchange proposal and feasibility report the benefiting agency must provide the following information. (The benefiting agency official authorized to establish the acquisition priority and commit to the allocation of resources necessary to conduct the exchange must approve this information.)
 - Identification of acquisition authority;
 - Documentation of consistency with agency land use plans;
 - Identification of post-acquisition management or use of the property;
 - Preliminary title evidence for the non-Federal land;
 - Summary of other acquisition alternatives considered;
 - Identification of key constituents, adjacent property ownerships and interested publics;
 - A point of contact for communication and coordination; and
 - Availability of funding.
 - b. Interagency ATI - In addition to the information contained in Chapters 4 and 5 it is also important to address the following items as a part of the Interagency ATI:
 - Agencies should identify a point of contact responsible for communicating and coordination.
 - The ATI must include the standard provision related to the availability of information in the exchange process.
 - The ATI must identify the roles and responsibilities each agency will have for conducting external consultation and coordination. The consultation and coordination responsibilities should include Native American, State and local governments, congressional delegation members and other key constituents. It may be beneficial to develop one briefing package for use by all parties involved in these responsibilities.
 - The benefiting Federal agency should be assigned all responsibilities related to evaluation and acceptance of title for the non-Federal land. The responsibilities should include completing the Environmental Site Assessment, completing Certificates of Inspection and Possession, providing for preliminary title review, determining survey adequacy, completing necessary notifications and obligations related to relocation, and reviewing conveyance documents to accept title on behalf of the United States consistent with Department of Justice standards. Copies of all documentation related to this work needs to be provided to the BLM for inclusion in the official case file. Benefiting agency title responsibilities should also include addressing management responsibilities for any

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appurtenant or associated property interests or rights such as water, mineral, access or timber being reserved by the non-Federal party or conveyed to the United States in the transaction. Consult with cadastral survey as needed regarding survey adequacy.

- The benefiting agency's roles and responsibilities in completing the NEPA documentation must be specified.
 - The BLM must retain responsibility for reaching an agreement on value for both the Federal and non-Federal land. ASD will review and approve appraisals.
 - All parties to the exchange, including the benefiting agency, should execute the ATI.
 - Where appropriate, concurrence and congressional notification processes must be completed. For land exchange proposals involving the U.S. Forest Service, the concurrence processes will be jointly conducted and a lead agency will be assigned the responsibility for completing congressional appropriations committee notifications.
3. Land Exchange Processing. The information contained in Chapter 6 related to land exchange processing should be sufficient to guide exchange processing. However, if consultation is required with either the U.S. Fish and Wildlife Service or the State Historic Preservation Office, the potentially benefiting agency should conduct consultation(s) in conjunction with addressing the acquisition of the non-Federal land. Native American consultation remains the responsibility of the BLM.
 4. Decisions. Prior to the land exchange decision, the BLM should obtain a written statement from the benefiting agency indicating that reviews have been completed on environmental documents and related reports, public comments, appraisals, public interest determination, title and deeds, and that the agency concurs to proceed with the Decision on the land exchange proposal. The draft decision reviewed by the other agency must clearly list all title reservations and encumbrances associated with the non-Federal property.
 5. Closing and Post Acquisition Management. The same closing procedures would generally be used for other agency benefiting exchanges, i.e., simultaneous closings, unless different closing procedures were indicated. If the transaction requires an equalization payment from the Federal party, the benefiting agency should make the necessary arrangements to deposit the Federal equalization funds in escrow. See Chapter 16 regarding utilization of escrow for closings and directions for handling Federal funds in escrow closings.

Acceptance of the non-Federal title would be accomplished through the appropriate Solicitor or General Counsel that the benefiting agency utilizes.

Generally the non-Federal lands being acquired would not be opened to entry after the exchange is completed, since it is anticipated that the land would be within a designated boundary or unit of the other agency and would thus be withdrawn. However, if this is not the case, the need for a withdrawal and associated workload would have to be addressed during the scoping and feasibility stage as addressed in Chapter 2.

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C. Bureau Support Activities for Other Federal Agency Exchanges

The BLM may provide support activities to other Federal agencies considering land exchange proposals for land under their jurisdiction. These support activities may include record notations, mineral evaluations, cadastral survey related activities, withdrawal processing related to the transaction, and preparation of conveyance documents. Refer to applicable manual and handbook sections on conducting these support activities (BLM Manual 1860 and Handbooks H-1860-1 and 1862-1 Preparing Conveyance Documents, and BLM Manual 3060 Mineral Reports).

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Chapter 15 - Title and Conveyance Documents

A. Introduction and Authority

Unless the Attorney General, through the Department of Justice, gives prior written approval of the sufficiency of the title to land for the purposes for which property is being acquired by the United States, public money may not be expended for the purchase of the land or any interests therein (40 U.S.C. 255).

In 1970, the Attorney General delegated the authority for approval of title to other Federal departments, including the Department of the Interior. Within the Department of the Interior, approval of title has been re-delegated to Regional and Field Solicitors (Solicitor). The authorized officer must ensure that the appropriate Solicitor reviews and approves title to non-Federal land acquired in land exchanges. The Department of Justice (DOJ) has provided four primary reference sources as guidance:

- Department of Justice Title Standards ²⁰¹⁶ ~~2001~~ (2001 DOJ Standards). ²⁰¹⁶ ~~2001~~ New: Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisition (2016)
- A Procedural Guide for the Acquisition of Real Property by Governmental Agencies, 1972 (The Procedural Guide).
- Unpublished Regulations of the Attorney General.
- Memorandum from the Department of Justice to General Counsels and Solicitors for agencies acquiring land.

In 1992, the DOJ modified the Standards to require a new title insurance policy form, the “ALTA U.S. Policy - 9/28/91” be used in all Federal land acquisitions. This policy form was jointly developed by the DOJ and the American Land Title Association (ALTA).

The DOJ no longer maintains a list of approved providers of title evidence. Instead, the ²⁰¹⁶ ~~2001~~ DOJ Standards provides guidelines for agencies to use in determining if a provider of title evidence is properly qualified.

B. Title Evidence to the Non-Federal Land

Title evidence is needed throughout the exchange process to evaluate an exchange proposal, make a determination of public interest and obtain formal title opinions from the Solicitor. While the format and requirements for title evidence depends on the step in the exchange process, the non-Federal party should be aware that an ALTA U.S. Policy - 9/28/91 form of title insurance from an qualified provider must be provided to complete an exchange. Exceptions to this requirement are discussed below.

There are three sources of information on title matters that must be obtained and reviewed. The sources of this information are title companies (or other approved sources under the ²⁰¹⁶ ~~2001~~ DOJ standards), non-Federal parties, and inspections done by the BLM.

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1. Title Evidence Provided by Title Companies. The ~~2001~~²⁰¹⁶ DOJ Standards permit title evidence to be submitted by qualified attorneys, abstracters, federal employees familiar with the preparation of such evidence, and title companies. Abstracts of title are rarely used, except in situations where title companies will not insure title to the interest, such as water rights or separate mineral estate, in land being acquired. Title companies provide title evidence based on recorded documents summarized in abstracts of title, preliminary title reports, title insurance commitments and title insurance policies.

A preliminary title report is commonly used as title evidence in the preliminary exchange processing steps. Title insurance commitments, also referred to as binders, are similar to preliminary title reports, but include a commitment by the title company to issue a policy of title insurance. Commitments should be valid for a two year period and must specify the policy form to be issued as the ALTA U.S. Policy - 9/28/91.

Non-Federal parties typically have a title insurance policy for lands under their ownership. The policy of title insurance may be acceptable for the feasibility review; however, a new ALTA U.S. Policy - 9/28/91 will be needed at the completion of a land exchange transaction.

A proforma title insurance policy is an unsigned undated version of a title insurance policy, and technically is not a form of title evidence, since the title company does not sign it. The use of a proforma may be acceptable as long as there is some kind of commitment by the title company to issue a policy identical to the proforma, and of course, subject to the individual Solicitor's requirements.

In order to properly evaluate abstracts, title reports, commitments, and policies, the Solicitor will need all supporting documents, including vesting documents, and documents which created exceptions to title, and documents showing the authority of the owner to convey property.

Title insurance commitments must include the following:

- a. Name the United States of America as the proposed insured.
- b. Show that the title insurance policy will be issued on the ALTA U.S. Policy Form- 9/28/1991, show the amount of insurance. The dollar amount of insurance should conform to the limits of liability found in the ~~2001~~²⁰¹⁶ DOJ Standards. The ~~2001~~²⁰¹⁶ DOJ Standards provide that the title insurance policy should have a liability amount not less than a sum which is 50 percent of the consideration paid for the property. For acquisitions valued over \$100,000 the liability may be limited to 50 percent of the first \$100,000, and 25 percent of that portion of the value consideration in excess of \$100,000.
- c. Describe the estate or interest insured, i.e., fee, mineral, easement, etc.
- d. Show that the estate or interest is vested in the United States of America and its assigns.
- e. Describe the land acquired by the United States using the same description as used in the

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recorded deed to the United States.

- f. List in Schedule B those items which are exceptions to the protections provided by the policy of title insurance. These items will be addressed as part of the title approval and acceptance process.

At closing, the title company will provide a title insurance policy which will conform to the above requirements.

2. Information Provided by the Non-Federal Party. The non-Federal party should provide any unrecorded documents which may affect title, a draft deed to be used in the conveyance and information related to who has the authority to execute the deed.

State law determines which legal entities are capable of conveying real property, normally including corporations, partnerships, fiduciaries (trustees, executors, etc.), governmental entities and individuals.

Corporations, partnerships, and fiduciaries must provide documents showing their authority to hold and convey property. Corporations should provide portions of their charters or other records showing the power of the corporations to hold and convey real estate. In addition, the corporation should provide a certified copy of a resolution authorizing the conveyance and identifying who has the authority to sign pertinent documents. In states where franchise taxes are a lien or where nonpayment of taxes can suspend or terminate a corporation's power to do business, certification is needed from the Secretary of State that the corporation is in good standing and qualified to do business in the State.

Trusts provide a copy of the Trust Agreement to show who will be executing the documents as trustee.

Individuals provide information on marital status as it affects who will be executing the conveyance documents.

In transactions with State governments a draft deed or patent is provided, along with a citation of the state law providing the authority for the conveyance. If the State land has never been in private ownership, the State submits certification that the land has not been sold or otherwise encumbered in lieu of a title commitment or a title insurance policy.

3. Inspections Done by the BLM. As a part of the title review process, the BLM must inspect the non-Federal property, interview the owner and complete a Certificate of Inspection and Possession (CIP). Refer to DOJ ~~2001~~2016 Title Standards for a copy of the CIP Form. The inspection provides information as to whether any recent work has been done on the property, which may result in contractor liens, and whether there are easements, occupants, or improvements on the property that did not appear in the title evidence provided by the title company.

The CIP is completed two times in the exchange process. The first inspection is completed shortly before requesting a preliminary title opinion. The second inspection is normally made

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immediately prior to the closing of the transaction. Simultaneously with the inspections, the BLM interviews the owner(s) as to unrecorded items which may affect title, and the marital or other legal status of the owner, as applicable.

C. Conveyance Documents for Non-Federal Land

The BLM generally prepares a draft conveyance and provides it to the non-Federal party. Doing so ensures the draft document meets DOJ standards, in a form acceptable to the county recorder. If the non-Federal party drafts the conveyance document, with assistance from the BLM, the BLM ensures that the document is drafted consistent with the Department of Justice requirements for deeds in the ~~2001~~ **2016** DOJ Standards. Generally, these standards require preparation of a general warranty deed. However, a special warranty deed or equivalent may be accepted in consultation with the Solicitor.

Four items which require particular attention and review when drafting conveyance documents for the non-federal land are:

1. All deeds must contain the following consideration clause: “For and in consideration of the exchange of certain land and interests as authorized by Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)....” Where an equalization payment is made or another authority is used, change the language to reflect the appropriate consideration and authority.
2. Short legal descriptions generally can fit directly into the deed, and long legal descriptions may be attached as a separate exhibit. Previously created mineral exceptions should be placed at the end of the legal description and should be identical to those identified as outstanding rights in the Agreement to Initiate. The legal descriptions must be closely reviewed to ensure they match those in the NOEP, Agreement to Initiate, and other exchange documents.
3. Any interests proposed to be reserved in the conveyance document must have been identified in the Agreement to Initiate and evaluated as a part of the land exchange process.
4. Contain a reference to the name of the agency for which the lands are being acquired. This statement should follow the description of the land and in no instance should it be included in the granting, habendum or warranty provisions of the deed. The suggested form of this statement is a simple declarative sentence, as follows: The acquiring federal agency is the Department of the Interior, Bureau of Land Management.

D. Evaluating the Condition of Title

Review of the conveyance documents is generally the responsibility of the Field Offices and should be initiated upon receipt of the title insurance commitment. The title commitment should be carefully reviewed to insure that it meets the requirements outlined in Section B.1 above. The title company should provide a copy of the vesting deed and recorded documents to support listed easements and other encumbrances. Any defects in the title commitment should be corrected with an amended title commitment or endorsement prior to requesting preliminary title opinion.

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The purpose of evaluating the condition of title is to ascertain which exceptions to title may be acceptable and those that will need to be removed or resolved. Often referred to as clouds on title, these are items in the title evidence which cast doubt on the ownership of the land or the authority of the owner to convey the land. The exceptions that need to be reviewed are found in two places in the title evidence. Schedule A includes exceptions to the estate being conveyed to the United States such as reserved mineral estate held by third parties. Schedule B normally includes a listing of all encumbrances such as leases, licenses, and rights-of-way and other matters which would not be covered by the title insurance. These items should be carefully reviewed to ensure acceptability for acquisition by the U.S.

While it is impractical to list and evaluate all conceivable exceptions to title, the following general guidelines may be used in evaluating title evidence:

1. Exceptions to Title Which as a Matter of Policy are Not Acceptable. These include all property taxes and assessments. It is the policy of the U.S. to insure that all property taxes and assessments have been paid prior to acquisition of land by the U.S. Refer to Chapter 16 Section C.4. Recorded judgments, mechanic's liens, deeds of trust, mortgages, are also matters which could appear in a title report and indicate that parties other than the owner may have a recognizable interest in the land. These must always be eliminated.
2. Exceptions to Title Which May or May Not be Acceptable. The most common exception to the estate being conveyed is where the mineral estate is owned separate from the surface estate. The extent to which the mineral estate will be conveyed should be identified in the Agreement to Initiate and evaluated throughout the land exchange process. Title documents should match the previously identified status of mineral ownership and conveyance expectations.

Depending on the terms of the authorization, third party rights may continue to be valid after the land has been conveyed to the U.S. The principle factor to be used in considering whether an encumbrance is acceptable or unacceptable is whether the exercise of rights by the third party would adversely affect the purposes of the U.S. in acquiring the land. Normally, encumbrances such as road or utility easements would not adversely affect use of the land by the United States and would be acceptable. All outstanding third party rights identified in the title documents should have been listed in the Agreement to Initiate and evaluated as a part of land exchange processing. The evaluation should have included obtaining a full copy of the authorization, providing notice of outstanding interest, field review to determine if location and extent of development coincide with the authorization, and an evaluation of potential for the outstanding rights to conflict with the BLM's intended management of the non-Federal land. It may be appropriate to use an administrative waiver, subject to approval of the Solicitor, for dealing with acceptable encumbrances. See Chapter V11 of H-2100-1 Acquisitions Handbook.

E. Title Evidence and Conveyance Documents for Federal Land

The United States does not furnish a title insurance policy for Federal land. The conveyance document will show all third-party rights, reservations, leases, or other land use authorizations on the Federal land. A non-Federal party wishing to obtain a title policy for the Federal land involved in an exchange must do so at their own cost.

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Federal lands are conveyed by patent, quitclaim deed, or other deed without express or implied warranties, except the warranty as to hazardous substances according to 43 CFR 2200.0-6(j)(1). BLM Manual 1860 and 1862 and Handbook H-1860-1 provide guidance on patents and deeds. Additional guidance on reporting hazardous substances activity when transferring Federal land is found at 40 CFR Part 373.

Patents are generally issued where the Federal land has never been out of United States ownership and where no previous patent has been issued. Quitclaim deeds are issued for Federal land that has been previously conveyed out of Federal ownership by a patent and subsequently reconveyed to the U.S. Although a quitclaim deed is normally issued for Federal land, other types of deeds without warranty may be used pursuant to 43 CFR 2201.8(b) (2). These deeds, such as bargain and sale deeds, must conform to State statutes.

In order to properly prepare a conveyance document the non-Federal party must provide evidence that the patentee is a legal entity authorized to hold title to real property under State law and verify the correct name and spelling of the patentee.

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Chapter 16 - Closing a Land Exchange Transaction

A. Timing and Responsibilities for Land Exchange Closing Procedures

Land exchange closing procedures are normally scheduled to occur promptly following the completion of the 45-day protest period associated with the issuance of a Notice of Decision and the 60-day notice to the Governor. If a protest is received it must be addressed, in accordance with guidance provided in Chapter 9, before exchange closing can occur. Most of the necessary documents for land exchange closing processes are drafted in advance of the issuance of the land exchange Decision. The documents and processes addressed in this chapter are generally finalized during the 45-day protest period to facilitate prompt closing.

The assignment of responsibilities for developing land exchange closing documents and closing processes and requirements vary from state to state. The information contained in this chapter should be supplemented with state specific guidance on land exchange closing processes.

B. Simultaneous vs. Non Simultaneous Closings

The Federal Land Exchange Facilitation Act (FLEFA) provided the authority for simultaneous transfer of titles between the United States and the non-Federal party in land exchange transactions. Simultaneous transfer of title is the preferred means of completing an exchange transaction because the process mirrors private sector real estate business practices. Pursuant to 43 CFR 2201.9(a), unless otherwise agreed, title to both the non-Federal and Federal land simultaneously shall pass and be deemed accepted by the United States and non-Federal party respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. In certain locations or instances, local custom or title and recording nuances may dictate the need to complete the transfer of title in the exchange in a non-simultaneous manner.

The land exchange closing method to be used in the exchange transaction, simultaneous or non-simultaneous title conveyance, must be stipulated in the Agreement to Initiate pursuant to 43 CFR 2201.1(c)(13). **See also 43 CFR 2201.9 & pg. 4-8**

To confirm that acceptable title is vested in the United States, the BLM obtains a final title opinion from the Solicitor after closing. In exchanges where title does not transfer simultaneously, the authorized officer is presumed to have accepted title when the Solicitor issues the final title opinion.

C. Initiating the Land Exchange Closing Process

The Field Office initiates the land exchange closing processes by sending a memorandum and the official case file to the State Office requesting initiation of final case processing. On receipt of the request for closing the land exchange case the State Office will initiate a final adjudication process to ensure that all procedural steps necessary to finalize the exchange have been completed and are adequately documented in the case file. Final adjudication should include verification that all requirements have been met and that reports, such as Environmental Site Assessment, appraisals, mineral report, CIP and relocation assessment are current. Legal descriptions in all reports should be verified for accuracy. The Notice of Exchange Proposal (NOEP) should be reviewed to ensure that

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all lands described in the decision were included. For federal lands in the exchange, the legal descriptions, current status of encumbrances, and proper segregation of the lands should be checked. A current mineral leasing report and a mining claim report should be obtained and data verified. For non-federal lands, the title evidence, current ownership and legal descriptions should be reviewed. The State Office will also coordinate title review and acceptance with the Solicitor, prepare the conveyance documents, and arrange the closing depending on the method of conveyance.

Field and State Office staff involved in land exchange closing processes should closely communicate and coordinate on the closing requirements well in advance of the issuance of a land exchange decision. Effective communication and coordination during this phase of the exchange process ensures that the final adjudicative and closing processes are completed in a timely and effective manner.

The information that follows describes the land exchange closing general process requirements, first for simultaneous closing and then for non-simultaneous closings.

1. Simultaneous Closing Requirements - The following conveyance document, title and escrow steps are associated with completing simultaneous land exchange closings.
 - a. The preliminary title commitment or other form of title evidence, as discussed in Chapter 15, is reviewed and title is cleared.
 - b. The BLM generally prepares the deed on behalf of the non-Federal party depending on local custom and the preference of the non-Federal party. The non-Federal party may prepare and submit a draft deed for review to ensure that the Department of Justice requirements for deeds in the DOJ ~~2001~~2016 Title Standards have been met.
 - c. The BLM coordinating with the escrow officer and non-Federal party(s) prepares draft escrow instructions. See Section C.2 below for an in-depth discussion of Escrow and Escrow Processes.
 - d. A request for a Preliminary Title Opinion (PTO) is forwarded to the Solicitor²². The request generally includes the title evidence, draft general warranty deed, draft escrow instructions, DOJ Certificate of Inspection and Possession and Environmental Site Assessment of the non-Federal land. Refer to the ESA Handbook H-2101-4. Some Solicitors may wish to have a copy of the appraisal, relocation assistance form, and the good standing certificate for corporations. Each office should work closely with the Solicitor to determine the documents needed for the PTO request. When the Solicitor issues the PTO, any defects listed by the Solicitor must be corrected prior to closing.
 - e. The State Office prepares the conveyance document for the Federal land in accordance with

22 Although processes may vary, generally, a PTO is requested and completed well in advance of arranging for closing and the Solicitor would review the preliminary title package and issue an opinion authorizing closing so long as there are no changes and any identified issues are resolved. When arranging for closing, double-check that the condition of title has not changed from what was identified in the PTO.

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BLM Manual 1860 and Handbooks H-1860-1 and 1862-1. The patent or conveyance document is not to be signed until after the Solicitor issues the Preliminary Title Opinion.

- f. Generally, simultaneous title transfers are completed through an escrow and escrow agent. A key part of preparing for a simultaneous land exchange closing is preparing escrow instructions. More detailed information on escrow follows below.
2. Escrow and Escrow Processes - Escrow is a process using a neutral third party, generally an escrow officer employed by a title or escrow company who holds documents until the terms of performance identified in escrow instructions are met. The escrow officer, based on escrow instructions signed by all parties, satisfies the requirements of all parties to the transaction before recording conveyance documents. Immediately before recording, the escrow officer will request the title officer update the title evidence to insure no new encumbrances have appeared in the public record.
 - a. Escrow instructions. The BLM coordinating with the escrow officer and the non-Federal party(s) should prepare draft escrow instructions. Once a preliminary title opinion has been obtained, the escrow instructions can be finalized consistent with the Preliminary Title Opinion.
 - b. Just before closing of escrow, the authorized officer must execute an updated DOJ Certificate of Inspection and Possession.
 - c. Close of escrow. The BLM and the non-Federal party(s) sign the escrow instructions. The non-Federal parties execute the deed and forward it to the escrow officer. Simultaneously, the BLM delivers the conveyance document for the Federal land to the escrow officer. The escrow officer closes escrow (simultaneously recording conveyance documents) when the terms of the escrow instructions are met.
 - d. Upon the close of escrow, the escrow officer sends the following items to the authorized officer:
 - the recorded deed to the non-Federal land;
 - the policy of title insurance showing title vested in the United States of America, and its assigns;
 - a copy of the recorded conveyance document to the Federal land; and
 - a closing statement.

When the recorded documents and title insurance policy are received from the escrow officer, a request for final title opinion should be forwarded to the Solicitor. While the exact contents of the request will vary from state to state, copies of the recorded deed and title insurance policy should be included. Any corrections outlined by the Solicitor in the Preliminary Title Opinion should be addressed in the Final Title Opinion request.

3. Escrows Involving Equalization Payments - If the United States must make an equalization payment the State Office will prepare a voucher certificate to request a check or wire transfer

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from the National Business Center. (See instructions on BLM Form 1370-32) The check may be sent directly to the authorized officer or to the escrow officer. If the funds are deposited with escrow in an interest bearing account they remain Federal funds until the time of closing. Any interest earned must be deposited to Treasury immediately upon the close of escrow.

If the non-Federal party is to make an equalization payment, the non-Federal parties funds should be placed in escrow in the name of the non-Federal party and the escrow instructions should indicate that the funds remain under the control or possession of the non-Federal party until the time of closing. The escrow instructions should provide that immediately upon closing, control of the funds transfers to the Federal government. Arrangements should be made prior to closing to have the equalization funds immediately deposited with Treasury with the proper accounting code. Generally, arrangements can be made for an immediate wire transfer to the Treasury account. Coordinate with the appropriate BLM collection officer related to making deposits to Treasury and accounting codes.

Any equalization payment made to the United States should be immediately deposited into the appropriate BLM account upon closing, and handled in advance of the final transmittal of documents from the escrow officer. The authorized officer then forwards these items to the State Office along with the updated Certificate of Inspection and Possession, as well as other information needed for the request to the Regional or Field Solicitor for a final title opinion.

4. Paying for Property Taxes and Assessments - No reference to taxes should be made in the Policy of Title Insurance. All tax installments which are payable must be paid by or on behalf of the non-Federal party(s). Funds to cover taxes may be deposited into escrow by the non-Federal party(s), or withheld by the escrow officer from the proceeds of the escrow, to assure payment of any unpaid taxes which may be due as of the actual date of tax cancellation, which would be determined by the escrow officer from the County taxing authorities. As to any taxes which may be a lien but not yet due on the date of tax cancellation, a recommended formula for use in determining the amount to be withheld is the sum of the previous year's taxes plus twenty percent. Funds withheld in escrow for taxes may be paid directly by the escrow officer to the tax collector when due and payable or refunded to the non-Federal party(s) upon receipt by the escrow officer of satisfactory evidence that such taxes have been paid or canceled.
5. Paying for Escrow Services - The ATI identifies responsibility for the costs associated with escrow services. If the Federal government is to share in or be responsible for escrow costs, close coordination needs to occur with the procurement agent to ensure proper advance arrangement is made to pay for the services. Under no circumstances should the cost of escrow services be intermingled with land values, ledger imbalances, or Federal interest collected on Federal equalization funds held in escrow until closing. Regardless of which party is responsible for the costs of escrow services, both parties should receive copies of all escrow closing statements including those that show costs of the services. A copy of this statement, as well as, any and all other records relating to the closing should be maintained in the official case file.
6. Escrows in Facilitated Assembled Land Exchanges - Facilitated assembled land exchanges may involve separate but simultaneous escrows. The BLM is not a party to the escrows established by a land exchange facilitator for the purpose of handling separate transactions between the

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facilitator and other non-Federal parties. The BLM must receive copies of all closing statements and escrow documents.

7. Non-Simultaneous Transfer of Title - The process to complete non-simultaneous title transfer is initiated in the same manner as for simultaneous title transfers, but changes when the Solicitor has approved a Preliminary Title Opinion. At that point, the conveyance document to the Federal land is left in draft form while the following steps are taken:
 - a. The deed to the non-Federal land is recorded. This may be done by the non-Federal party or the BLM and may be done without the use of an escrow. In either case, the deed should be recorded in accordance with the BLM's escrow or recording instructions, and only if the title company is confident they can provide a final policy of title insurance identical to the proforma, and only in conjunction with the completion of a final Certificate of Inspection and Possession.
 - b. The title company provides a final policy of title insurance prepared in accordance with Department of Justice standards, showing title vested in the United States and its assigns and free from any title exceptions or encumbrances not waived by the Regional Solicitor.

The non-Federal party provides any equalization payment needed. The instructions above, addressing control and deposit of equalization funds in escrow, are also applicable to this method of closing. Upon receipt of the above items the Field or State Office requests a final opinion of title.

- c. The State Office issues the conveyance document to the Federal land. The BLM transmits the conveyance document and any needed equalization payment to the conveyee, generally via mail, FedEx, or similar service. It is advisable to use FedEx, UPS or other delivery method that provides a tracking service. It is the conveyee's responsibility to record the conveyance document.

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Chapter 17 - Post Land Exchange Actions and Land Status

A. Notification and Record Updates

Upon completion of a land exchange closing, take the following steps to ensure updating of land title, automated land records, and other land status records. State and Field Offices should coordinate the assignment of responsibilities for the actions to ensure completion in a timely manner.

1. After issuing a patent or deed notify the Governor and the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the geographical area within which the Federal land was located (43 CFR 2200.0-6(m) and 43 CFR 2201.9 (c)). Copies of any patent or deed sent to the Governor, County Commission/City Council, County Assessor, etc. should be clearly marked as “Courtesy Copy-Not for Recordation” or something similar.
2. Notify the local taxing authority of the acquisition of non-Federal land by the United States and request the land be transferred to non-tax paying rolls.
3. If the Federal land has been conveyed subject to a right-of-way or other land use authorization, provide notice to the holder and update the case file and automated records systems. If all the Federal land within the right-of-way has been conveyed, the right-of-way case can be closed. Copies of any patent or deed sent to the rights-of-way holders, etc. should be clearly marked as “Courtesy Copy-Not for Recordation” or something similar.
4. Update official land status records including Master Title Plats, Historic Index and LR2000 to reflect the conveyance and acquisition.
5. Establish case files for all easements, rights-of-way or other third party interests in the acquired land. Copies of the authorizing documents obtained in conjunction with title evidence for the non-Federal land should be placed in the case files as they are established. Update office maps and records as appropriate.
6. If the BLM has, acquired water rights complete all appropriate filings and management actions necessary to protect the acquired interests. Consult with your water rights program staff as needed.
7. If contributed funding was used to complete land exchange processing, reconcile and close the account.

Since the land exchange case file is a permanent record ensure that all documents related to the exchange process are filed in the case file. This would include closing statements and documents showing that escrow closing fees, publication costs and other contracted services have been paid.

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B. Status of Non-Federal Land Acquired by Exchange

Lands acquired by exchange are managed in accordance with FLPMA Section 205 (c) and (e), and 43 CFR 2200.0-6 (f) and (g). Land acquired in exchange for O&C or CBWR grant lands are managed in accordance with 43 CFR 2200.0-6 (e). Lands acquired by exchange are automatically open to entry under the land and mineral laws 90 days after closing unless the property is within a withdrawn or specially designated area

C. Status of Reserved U.S. Interest in Lands Conveyed

The policies in Chapter 1.F.2 and F.4 provide that exchange actions should serve to consolidate ownerships for better management, with conveyance document restrictions and reservations included only where absolutely necessary for the continuing protection of Federal interests. The effects of restrictions and reservations of United States interests in land exchange conveyances must be fully evaluated during the feasibility analysis and subsequent stages of processing. Provisions of law require that the United States reserve certain interests in land conveyed out of Federal ownership.

Where certain restrictions and reservations have been identified for inclusion in conveyance documents of Federal lands, consider the following future management implications.

1. Ditches or Canals - The reservation of ditches or canals in Federal patents issued west of the 100th meridian is a requirement of the Act of August 30, 1890 (43 U.S.C 945). From a practical standpoint, the potential for future involvement by BLM in administering this reservation is very remote.
2. Covenants - The conveyance of certain lands, depending upon location, law and/or the NEPA analysis may indicate use of covenants or reservations. An example is where floodplain restrictions may apply to future use of the lands. Chapter 6.E. provides additional information. The degree of any future BLM responsibilities in administration of a covenant would be governed by its specific terms and conditions.
3. Third Party Rights Needing Continuing Federal Administration - Certain third party uses previously authorized on the Federal lands may require continuing Federal administration. An example is a right-of-way authorization held by another Federal agency where continued Federal administration is desired. Refer to the 2800 Handbook for additional guidance.
4. Minerals - There may be instances where either some or all of the Federal minerals are reserved to the United States in a land exchange conveyance.

a. If Some or All Leasable Minerals Are Reserved

After conveyance of the surface, reserved Federal leasable minerals would continue to be open for operation under the mineral leasing laws and applicable regulations at 43 CFR 3100, 3200, 3400 or 3500. Potential surface interference issues would have been addressed in mineral potential reports and in the NEPA analysis.

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b. If Saleable Minerals Are Reserved

After conveyance of the surface, reserved Federal saleable minerals would continue to be open for disposition under the Materials Act and applicable regulations at 43 CFR 3600. Potential surface interference issues would have been addressed in mineral potential reports and in the NEPA analysis.

c. If Locatable Minerals Are Reserved

When Federal lands are exchanged, minerals reserved to the United States continue to be segregated from the operation of the mining laws unless a subsequent land use planning decision expressly restores the land to mineral entry and BLM publishes a notice to inform the public (43 CFR 3809.2(a)). Land use planning consistency review and analysis concerning status of reserved locatable minerals should be a part of the NEPA process for the land exchange action. If a determination is made that reserved minerals should be open to operation of the mining laws after conveyance of the surface, public notice could be included as part of the land exchange publications and distribution. Alternatively, reserved minerals would remain segregated from mining location until a future analysis and public notice were completed.

The circumstance of creating split ownership estates by conveying only the Federal land surface through exchange, reserving the Federal minerals, and subsequently opening reserved Federal minerals to operation of the mining laws presents title and management issues that must be considered.

The regulations at 43 CFR 3809.31(e) require that all mining operations would have to be approved through the filing of a notice or Plan of Operations. This means that BLM would have continuing responsibilities for the processing and administration of mining notices and plans under the surface management regulations for operations where the surface has been conveyed out of Federal ownership. The implications of continuing management responsibilities must be a part of the public interest analysis and determination in terms of how such a situation could result in better Federal management.

The mineral estate is the dominant ownership in property, and surface ownership is a subservient ownership. Potential future uses and conflicts, and associated BLM management responsibilities must be thoroughly considered before creating split surface and mineral ownerships.

D. Opening Orders and Withdrawals

The non-Federal lands acquired through exchange by the BLM are automatically segregated for 90 days after acceptance of title by the United States (43 CFR 2201.9 (b)). At the end of this 90 days period the land will automatically open to entry and appropriation under the public land and mineral laws unless segregated under 43 CFR Part 2300 or other Congressional or management action (see Section B above).

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If any of the federal lands are removed from the exchange, an opening order should be issued (43 CFR 2201.1-2(2)). The Field Office should evaluate the practicality of issuing an opening order if the end of the segregation period is near.

E. Personal Property Removal and Relocation

Generally, personal property removal and relocation responsibilities are completed prior to or simultaneously with title transfer. In a situation where that is not possible or practical, the following general guidelines apply.

Where applicable, ensure that any personal property owned by the non-Federal party not removed prior to acceptance of title is removed within previously prescribed time frames. In situations where it is agreed that the removal of personal property will be completed after the transfer of title, it may be appropriate to obtain a performance bond to ensure that removal will be completed within prescribed time frames and that the cost and responsibilities of such removal remain with the non-Federal party. If the property is not removed within the time frames, pursuant to 43 CFR 2201.8 (c)(iii) the property is deemed abandoned and shall become vested in the United States.

Relocation responsibilities and time frames of the United States for the acquisition of non-Federal land with qualified owners and all tenants should be outlined in a schedule prior to the acceptance of title. If occupancy is to continue after title transfer, appropriate actions need to occur to authorize such occupancy and expeditiously finalize relocation actions.

F. Data Standards for Land Exchanges

The Case Recordation System (LR2000) should be updated throughout the exchange process. Accurate data records provide the basis for public land statistics, workload measures, funding and status of the case to the public. Current data standards are available online through the LR2000 website or from the State Office Data Administrator.

Ref. LR2000 CR Data Standards (updated 2014) for Land Exchanges