

APPENDIX E

to the

CHUGACH REGION LAND STUDY and
REPORT

LAND EXCHANGE PROCESSES of the
FEDERAL AGENCIES

including

- (1) Bureau of Land Management
- (2) U.S. Forest Service
- (3) National Park Service

BLM LAND EXCHANGE PROCESS

BLM often exchanges land to achieve better federal land management by consolidating ownership and disposing of isolated or difficult to manage land. In addition, the BLM uses land exchanges to ensure BLM's successful implementation of its multiple resource management mission, meet community needs, promote multiple-use management, promote sustainable development, and fulfill other public needs. In Alaska, the BLM conducts land exchanges under three primary authorities: (1) FLPMA; (2) ANCSA; and, (3) ANILCA.

Implementing regulations and policies for BLM land exchanges can be found in 43 CFR Part 2200 and H-2200-1 BLM Land Exchange Handbook. 43 CFR 2200.0-7(c) provides that land exchanges made under ANCSA or ANILCA shall not be limited by BLM's 43 CFR 2200 regulations. If any BLM procedure or requirement in the BLM's H-2200-1 Land Exchange Handbook (Handbook) is deemed inconsistent with ANCSA or ANILCA, the statutory requirements will prevail in the processing and decision-making.

Sections 205, 206, and 207, as amended, of FLPMA, provide the primary authority for all BLM land exchanges. FLPMA authorizes the Secretaries of Interior and Agriculture to enter into exchanges where the Secretary determines the public interest will be well served and the value of the lands leaving Federal ownership is equal in value to lands the Federal government acquires. Where the values are not equal, cash can be used to equalize the exchange.

Public land may be exchanged if the Secretary determines that the public interest will be "well served." (43 CFR 2200.0-6(b)). FLPMA requires that when determining the public interest, several factors must be considered. Under BLM regulations, considerations determining public interest include protection of fish and wildlife habitat, cultural resources, watersheds, wilderness, and aesthetic values; enhancement of recreational opportunities and public access; consolidation of lands to improve development; and expansion of communities. The resource values and public benefits of the federal lands being conveyed must not equal more than those of the nonfederal lands being acquired. Additionally, the intended use of the conveyed federal lands should not conflict significantly with management of adjacent federal and Indian trust lands. (43 CFR 2200.0-

6(b)(2)). In making an exchange, BLM must reserve any rights or interests that are needed to protect the public interest and may impose restrictions on the use of lands conveyed.

FLPMA authorizes administrative, often referred to as discretionary, exchanges as it does not require federal agencies and nonfederal parties to exchange lands. FLPMA also requires that administrative, or discretionary, land exchanges be located within the same state.

Occasionally, Congress approves legislation authorizing land exchanges. Congressionally mandated land exchanges generally follow FLPMA's process and procedures, unless specifically otherwise directed.

The length of time generally required for completing land exchanges varies depending upon the circumstances and complexities. BLM land exchange completions in recent years have lasted from a few months to twelve years, most often five years. The BLM Handbook describes the lengthy process which, depending upon the complexities of the exchange, can easily involve 80 – 100 different steps (see Appendix XX). Although realty specialists manage and implement most of these steps, many individuals will be involved including, but not limited to, other specialists, surveyors, management, solicitors, appraisers, and title companies. In addition, the local field office, state office, and headquarters all play a role in the analysis and approval process.

The land exchange process can be organized into five phases: (1) development; (2) feasibility evaluation; (3) evaluation and documentation; (4) decision; and (5) title transfer. During the development phase, preliminary informal project discussions begin. BLM confirms the nonfederal land will be acceptable for acquisition and that the applicable land use plan approved the identified federal land for disposal. The federal lands will be withdrawn, or segregated, from mineral resource development and an agreement to initiate will be developed detailing the lands to be exchanged, including a legal description and each party's responsibilities. If the lands have not yet been surveyed, BLM cadastral will need to survey the lands before continuing the exchange process.

During the feasibility evaluation, BLM prepares a feasibility report documenting all aspects of the exchange, including public benefits, consistency with the land use plan, cost projections, cost and processing responsibilities, proposed land uses, value analysis, completion schedule, and any alternatives. At this stage, all exchanges require the review and concurrence of adequacy of the feasibility report, draft agreement to initiate an exchange, and draft notice of exchange proposal (NOEP). The DOI Office of the Solicitor, BLM state director where the land exchange will occur, BLM's national land tenure team, BLM assistant director, and, ultimately, the BLM director will review the NOEP. If all parties agree to proceed, the parties sign a nonbinding agreement to initiate an exchange, which serves as the framework defining roles and responsibilities for the land exchange. BLM regulations (43 CFR 2201.1) identify and define the many items required to be addressed in the agreement to initiate.

A notice of exchange proposal (NOEP) will be published upon entering into the agreement to initiate the exchange. Per the BLM Handbook, the NOEP serves three purposes: (1) advises the public of the opportunity to participate in the NEPA process by inviting comments on the land exchange proposal during a 45 day comment period; (2) notifies all authorized users and others who may have interests in or claims against the Federal and non-Federal land; and, (3) provides notice to State and local governments, and congressional delegations having jurisdiction over the land in the exchange proposal. Five items identified in 43 CFR 2201.2 that must be in every NOEP include: (1) identity of all parties involved in the exchange proposal; (2) complete legal descriptions of the Federal and non-Federal land and interests in land involved in the exchange proposal; (3) date and effect of the segregation; (4) 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) name, title and address of the official who will receive comments and the date by which comments must be received.

BLM must notify the House and Senate Committees on Appropriations of any federal land exchanges valued over \$1 million and provide the Committee members 30 days to review the exchange. If the land exchange involves federal lands valued at or between \$500,000 and \$1 million, BLM must provide the House and Senate Appropriate Committees advance notice of the exchange.

During the evaluation and documentation phase, the following evaluations occur: title review; appraisal, identification and resolution of any environmental issues noted during the National Environmental Policy Act (NEPA) review; resource and mineral valuations; hazardous materials review; certificate of inspection and possession; Section 106 National Historic Preservation Act (NHPA) consultations and review; ANCSA Section 810 subsistence consultations (Alaska only); 60 day notification to any third party agreements (rights-of-way, permit holders, easement holders, etc.); and negotiate any relocation agreements, if necessary. BLM provides notice to local and state governments, tribes, congressional delegation, and any others deemed necessary. The NEPA analysis and the appraisal frequently provide the most challenges, in time and complexity. The NHPA (Section 106) must be considered any time a federal agency conveys lands out of federal ownership.

FLPMA was amended in 1988 by the Federal Land Exchange Facilitation Act (FLEFA, 102 Stat. 1097). FLEFA contains provisions to facilitate and expedite land exchanges by establishing uniform rules and requiring appraisals and mandating that appraisal standards comply, to the extent appropriate, with the “Uniform Appraisal Standards for Federal Land Acquisitions” set forth by the Department of Justice (43 CFR 2201.03). Per the BLM regulations, land exchanges will be based on the market value of federal and nonfederal lands determined through appraisals. The appraiser must determine the highest and best use of the property based on the physical attributes, factoring in historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values reflected in prices paid for comparable properties in the open market. The appraiser also considers mineral and water rights to the extent consistent with the highest and best use. If current market information cannot be found, the parties may use other methods to estimate market value. Although federal employees or contractors may conduct appraisals, all appraisals must be reviewed by a DOI review appraiser.

In the decision stage, all proposed land exchanges require review and concurrence at several levels, as at the feasibility evaluation stage. BLM issues a decision record approving or disapproving the land exchange containing certain information, such as a determination of the public interest value of the exchange; a legal description of the lands being exchanged; a value equalization/cash

equalization waiver with or without adjustments as compensation for various costs; a statement of conformance with the pertinent BLM land-use plan; and acknowledgement that the decision will be implemented after a 45-day protest period. 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.”

Concurrently, BLM must provide the governor at least a 60-day notice prior to the conveyance of lands. BLM then publishes and distributes a Notice of Decision, in accordance with specified publication and distribution requirements.

During the final phase, a binding exchange agreement might be executed between the parties, legally committing them to conduct the exchange. If the nonfederal lands contain hazardous materials, a binding exchange agreement must be negotiated and executed addressing removal and other actions necessary prior to the exchange. Other actions at this final phase, referred to as title transfer, involve reviewing the final title evidence and land status, transferring the title to the federal and nonfederal lands, issuing a Final Title Opinion; and record notation on the BLM's master title plat.

Under ANCSA authority (Public Law 92-203, §22(f)), the Secretaries of Interior, Defense, and Agriculture may authorize an exchange of lands or interests of village and regional corporations, individuals, or State of Alaska for consolidation, management, or development. The land exchange may occur either on the basis of equal value or either party may accept cash to equalize value of land exchanged. NEPA will only be required if the land use plan needs amending to identify lands as disposable for exchange purposes. BLM will not need to segregate lands under ANCSA; however, the local field office may decide to request segregation depending on resource activity. Cadastral surveys will only be required if the land was not previously surveyed or the current boundaries change. Otherwise, per 43 CFR 2200.0-7(c), BLM should follow FLPMA and

the BLM Handbook in completing land exchanges, including a complete feasibility report discussing any resource and mineral valuations, hazardous materials, Section 106 NHPA studies and consultations, and other required evaluations.

Section 1302 of ANILCA, the third authority under which BLM acts, authorizes the Secretary of the Interior to exchange lands for the purposes of ANILCA within the boundaries of any CSU other than National Forest Wilderness. The Secretary needs to establish that the lands coming into federal ownership in an exchange have an intrinsic value offsetting the value of the lands the United States loses, not simply that acreage adds to a CSU. The exchange may be conducted based on equal value, and if the Secretary determines an exchange will be in the public interest, for other than equal value. Section 1302(h) specifically authorizes that either party to the exchange may pay or accept cash to equalize the value of the of the property exchanged, unless otherwise agreed and the Secretary determines the exchange will be in the public interest.

As with ANCSA, ANILCA land exchanges do not require NEPA unless the land use plan necessitates an amendment to identify lands available for disposal. Segregation of the parcels may be requested by the local field office depending on resource activity. Cadastral will not need to complete surveys unless the land has yet to be surveyed or the boundaries change. Otherwise, BLM should follow FLPMA and BLM Handbook procedures for land exchanges under ANILCA.



FOREST SERVICE MANUAL ALASKA REGION (REGION 10) JUNEAU, ALASKA

FSM 5400 – LANDOWNERSHIP

CHAPTER 5430 – EXCHANGES

Supplement No.: R-10 5400-2003-4

Effective Date: June 20, 2003

Duration: This supplement is effective until superseded or removed.

Approved: /s/ Dennis E. Bschor
DENNIS E. BSCHOR
Regional Forester

Date Approved: 6/5/2003

Posting Instructions: Supplements are numbered consecutively by title number and calendar year. Post by document; remove the entire document and replace it with this supplement. Retain this transmittal as the first page(s) of this document. The last supplement to this title was R-10 Supplement 5400-2003-3 to chapter 5460.

New Document	5430	6 Pages
Superseded Document(s) by Issuance Number and Effective Date	5430, 5400-98-2, 9/30/98	3 Pages

Digest:

5430.3:

Corrects caption to conform to parent text.

More accurately references applicable statutes.

Incorporates two Washington Office letters of direction as exhibits 01 and 02.

Clarifies language from an Office of the General Counsel opinion.

Changes the format and style to the new template using the agency's current corporate word processing software.

5430.3 – Policy

This supplement is further supplemented by two Washington Office 5430 letters dated January 23, 2001, and December 3, 2001, which are incorporated as 5430.3 – Exhibit 01 and Exhibit 02.

1. ANILCA and ANCSA Authorities. In addition to nationwide land exchange authorities, in Alaska the Alaska National Interest Land Conservation Act (ANILCA) Section 1302(h) and Alaska Native Claim Settlement Act (ANCSA) Section 22(f), as amended, provide authority for the exchange of lands or interests on the basis of equal value; except, if the parties agree to an exchange and the Secretary of Agriculture determines it is in the public interest, such exchanges may then be made for other than equal value.

When a preliminary analysis indicates the exchange proposal appears to be unequal in value and the Forest Service is willing to agree to the exchange, a determination of public interest must be made. This determination shall be based upon a comparative analysis of the various value factors of the Federal and non-Federal lands involved for National Forest System proposals.

In addition to the criteria listed in FSM 5430.3 and 5403.1, the following items should be compared:

1. Timber volumes/values
2. Wildlife and fisheries values
3. Soil and water values
4. Recreation potential
5. Visual/Aesthetic values
6. Mineral values and/or encumbrances

The non-Federal land must be at least as valuable for National Forest System purposes as the Federal lands. This is not necessarily determined in hard dollar values.

In addition, compliance with Federal Laws and Executive Orders must be demonstrated. These include, but are not limited to:

1. Endangered Species Act
2. National Historic Preservation Act
3. Coastal Zone Management Act
4. ANILCA, Section 810 (Subsistence)
5. Executive Order 11988 (Floodplains)
6. Executive Order 11990 (Wetlands)
7. CERCLA/RICRA (Hazardous Waste)

2. ANILCA Section 910. This Section states, in part: "The National Environmental Policy Act of 1969 (83 Stat. 852) shall not be construed, in whole or in part, as requiring the preparation or submission of an environmental impact statement for withdrawals, conveyances, regulations, orders, easement determinations, or other actions which lead to the issuance of conveyances to Natives or Native Corporations, pursuant to the Alaska Native Claims Settlement Act, or this Act."

A land exchange results in a conveyance.

An OGC opinion dated January 23, 1987 regarding Section 910, states that land exchanges (with Natives or Native corporations) completed under ANCSA Section 22(f) or ANILCA Section 1302(h) probably are exempt from preparation of an environmental impact statement (EIS). However, Section 910 does not exempt exchanges from compliance with statutes and Executive Orders listed in FSM 5430.3. It is always advisable, for a land exchange with any accompanying potential environmental concerns or controversies, to prepare an environmental assessment.

It is proper to state the exemption from NEPA in the analysis document, but it is not prudent to forgo the documentation provided by an environmental assessment upon the basis of the alleged exemption in Section 910.

5430.3 – Exhibit 01

File Code: 5430

Date: January 23, 2001

Route To:

Subject: Alaska Region Land Exchange Procedures

To: Regional Forester, Alaska Region

Questions have come to our attention as to how the special provisions for Alaska which are contained in Federal law will be handled within the required national direction establishing oversight reviews by the National Landownership Adjustment Team (NLAT). Specifically, how will the WO and NLAT recognize and respond to exceptions contained:

1. in sec. 1302(h) of ANILCA and sec. 22(f) of ANCSA (as amended), which allow for exchanges for other than equal value, provided both parties agree to the exchange and the Secretary determines the exchange to be in the public interest; and

2. in sec. 910 of ANILCA, which does not require an environmental impact statement for a number of activities, including land conveyances to Natives or Native Corporations, pursuant to ANCSA or ANILCA.

Sec. 910 of ANILCA has been interpreted in the past, to allow land exchanges in Alaska with Native Corporations, without following the normal Forest Service procedural requirements of NEPA. Although the exceptions cited above allow for deviation from national policies and procedures, they do not require it.

The Alaska land exchange transactions have been in some measure exempted from national oversight requirements, partly because of the unique laws Region 10 works under and the situation that few administrative exchanges have been initiated. This was referenced in a 5400 Region 10 memo to the Chief, dated November 23, 1998, relying on an October 23, 1998, discussion with me. Although we have allowed the Alaska Region some flexibility from national oversight in the past, our national land exchange program has come under increasing scrutiny while the Alaska Region has experienced a shortage of personnel with land exchange experience. For these reasons, we now need to conform with the original charter for the NLAT as noted in November 16, 1998, letter to the Regional Foresters from the Deputy Chief and require oversight on all new or pending land adjustment cases in which the Federal lands are valued at \$500,000 or over and all cases that are proposed as assembled transactions. Any

proposal to categorically exclude (CE) a land exchange from an EIS or EA also requires prior to review and concurrence by the NLAT. A new case is one that does not have a signed exchange agreement prior to the date of this memo. In accordance with our national charter, you are not currently required to submit for national review: (1) any purchases, or (2) exchanges involving Federal lands valued under \$500,000.

Consistent with previous policy direction, to obtain standard policies and procedures nationwide, the WO and NLAT, unless waived on a case specific basis by the Deputy Chief, Alaska administrative land exchanges are to follow an appropriate analysis and documentation conducted under the standard nationwide Forest Service procedures for compliance with NEPA

Regional Forester, Alaska Region and our processing procedures outline in 36 CRF 254 subpart regulations. In addition, all future exchanges must comply with national requirements for equal value exchanges. All purchases will be for fair market value. We are standardizing these national policies and procedures, notwithstanding exceptions that may be allowed within ANILCA and ANCSA.

Although the Alaska Region has successfully processed some very complicated landownership transactions in the past and has not been the cause of the national scrutiny, we need to ensure consistency with national policies as outlined in the Chief's recent report to the Secretary dated October 2, 2000. This will further enhance our credibility and strengthen our national land adjustment program.

Please make the appropriate changes to your Regional FSM, supplements, etc. to comply with this existing policy direction. Please contact Dennis Kennedy, at (202) 205-1359, if you have any further questions.

/s/ Gregory Smith

for

JACK L. CRAVEN

Director of Lands

5430.3 – Exhibit 02

File Code: 5430

Date: December 3, 2001

Route To:

Subject: Alaska Region Land Exchange Procedures

To: Regional Forester, R-10

Due to concerns voiced by Sealaska Corporation and Chugach Alaska Corporation, this is a follow-up to the Washington Office letter of January 23, 2001, concerning special land exchange provisions for Alaska contained in Federal law. There is a concern or misinterpretation by these corporations that the Forest Service is abrogating certain authorities under ANILCA and ANCSA.

Section 1302(h) of ANILCA and Section 22(f) of ANCSA currently provide that exchanges shall be based on equal value and contain provisions for cash equalization, except that exchanges can be made for other than equal value when the parties agree, and the Secretary determines that it is in the public interest. For purposes of clarification, nothing in our exchange policies should be construed to abrogate the authority for unequal exchanges. Likewise, administrative exchanges are always discretionary on the part of the Secretary and the exchange proponent.

A key concern of the corporations resides in our ability to enter into land exchanges for other than equal value. Under any circumstances where the Regional Forester deems that an exchange of unequal values will be in the public interest, the Regional Forester may submit a recommendation for approval of such an exchange to the Deputy Chief.

For land exchanges, the Forest Service will continue to document environmental impacts pursuant to the National Environmental Policy Act and implementing regulations, subject to Section 910 of ANILCA. The exemption from the requirement for preparation of an environmental impact statement as provided by section 910 applies to actions which lead to land conveyances to Natives or Native corporations made pursuant to ANCSA or ANILCA. Application of this exemption to a particular land exchange should be determined on a case-by-case basis in consultation with the Office of the General Counsel. The Forest Service always retains the discretion to utilize NEPA procedures and documentation based on the magnitude of the transaction, public controversy, and environmental complexity.

/s/ Dale N. Bosworth
DALE N. BOSWORTH
Chief

Land Exchange Procedures for the National Park Service

NPS land exchanges are authorized by multiple legal authorities, but most in Alaska are accomplished through the provisions of section 1302(h) of the Alaska National Interest Lands Conservation Act (ANILCA, 16 USC 3192). Exchanges must be consistent with the principles set forth in Directors Order #25 and NPS Management Policies 2006, in addition to statutes directing overall management of NPS and statutory mandates. While NPS does not have agency-specific exchange regulations, the agency typically looks to those governing BLM exchanges for guidance, as well as the National Park Service Land Acquisition Procedures (LAPS 2017). Below is the general process followed by NPS, recognizing that any Park-specific legislation would be controlling.

Phase of Exchange	Steps
Initiation and Agreement	<ul style="list-style-type: none">• Determine Park has legislative authority to exchange lands/interests• Determine if funding is available to pursue the exchange• Determine proposal meets demonstrable benefit suitability criteria• Begin preliminary negotiations with non-federal party• Develop preliminary mapping and legal descriptions• Order preliminary title evidence• Superintendent provides justification statement for Regional Director approval• Land owner and Regional Realty Officer sign preliminary exchange agreement, detailing the proposal, process, and division of costs
Compliance Requirements	<ul style="list-style-type: none">• NPS initiates compliance process, including NEPA, cultural, Section 810 of ANILCA, etc
Public Notification and Appraisal	<ul style="list-style-type: none">• Prepare Notice of Realty Action for local publication, to be reviewed by solicitor, followed by obtaining regional director signature• Notify adjacent landowners, public officials, the Congressional delegation, and other potentially interested parties of the proposed exchange• Publish NORA in local newspaper for three consecutive weeks and providing 45 days for comments after last publication• If no comments are received, Superintendent can give permission to proceed; if adverse comments are received, the exchange agreement may be modified, cancelled, or the parties may proceed.• If the state or local government or any party in interest requests a public hearing, NPS will hold one in the area where the lands are located.• If the exchange is particularly large or sensitive, publication may also be made in the Federal Register, allowing 45 days for public comment• NPS will order land appraisals through the Appraisal and Valuation Services Office• Hazardous Materials surveys will be performed on the properties
Final Agreement (if needed)	<ul style="list-style-type: none">• Receive appraisals, determine if cash equalization payment is applicable• Develop final exchange agreement and obtain signatures

Congressional Notification and Federal Register Notice	<ul style="list-style-type: none"> • Publication in the Federal Register of large or controversial exchanges may occur instead at this point in the process • NPS Lands Washington Office will, if required, prepare a package for Congressional Review. The Committees on Appropriations will have 30 days to review and comment.
Closing	<ul style="list-style-type: none"> • Office of the Solicitor will provide Preliminary Title Opinion • Closing will occur by simultaneous recording of warranty deed to USA and patent/quitclaim deed to third-party and transfer of any cash equalization payment