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Forest Service Manual 5409.13 – Land Acquisition Handbook

Chapter 10 – Land Purchase

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Approved by: Christopher French, Associate Deputy Chief, NFS

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Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Posting Instructions: Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 5409.13-2004-2 to 5409.13_37-39.

Revises chapter in its entirety to align with industry practices/standards and current law.
Reorganizes content to better reflect the systematic processing of a land purchase case.

11: Changes caption from “General Guidelines” to “General Guidance for Land Purchases.”
Revises section in its entirety to provide more explanatory information about types of purchases that can be undertaken. Removes exhibit outlining general purchase procedures. An updated list is available on the “forms” section of the Land Adjustment Data System (LADS). Removes exhibit “Deferred Payment Attachment.” Removes exhibit “Deferred Payment without an Option.”

12: Moves “Purchase Units” to section 14.2. Revises the chapter in its entirety to outline better how to conduct a preliminary evaluation of land purchase cases, negotiate costs, and work with a conservation partner.

13: Moves “Administrative Sites” to section 14.1.

14: Changes the caption from “Records and Reports” to “Permanent Title File” and moves the content to section 16.4. Updates oversight and option requirements. Removes previous exhibits entitled “Card Record” and “Land Purchase Documents and Processing Summary Chart.”

15: Removes and replaces previous section in its entirety.

16: Reorganizes and revises title and closing information into one section entitled “Title and Closing Procedures.”

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The following guidelines apply to land purchases under all current authorities.

10.1 - Authority

General land purchase authorities that have Service-wide application are found in FSM 5420.11. Specific area purchase authorities are found in FSM 5420.12.

10.11 - Processing and Oversight

Laws, regulations, and Executive orders affecting purchases are found in FSM 5420.14. In addition, the following laws and regulations apply to the land purchase process (this list is not exhaustive).

1. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of December 11, 1980, as amended (42 U.S.C. 9601, et seq.). Under this Act, purchasers of contaminated property may be liable and potentially forced to pay for or perform costly cleanups. CERCLA was amended in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act of January 11, 2002 (Pub. L. No. 107-118, 115 Stat. 2356), which limits the liability of purchasers of contaminated property through the bona fide purchaser and innocent purchaser exemptions and all appropriate inquiries procedures. Guidance related to environmental site assessments is found in the Pre-Acquisition Environmental Assessment Guidance for Federal Land Transactions, Department of Interior Environmental Compliance Memo (ECM 10-2) (available at: <https://www.doi.gov/oepc/resources/environmental-memoranda-series>).
2. National Historic Preservation Act (NHPA) of October 15, 1966 (54 U.S.C. 300101, et seq.). Sec. 110(k) addresses anticipatory demolition of historic structures. This section prevents an agency from assisting an applicant that has intentionally significantly adversely affected (or allowed to be affected) a historic property with the intent to avoid consultation requirements under Sec. 106 unless the agency, after consultation with the Advisory Council on Historic Preservation, determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.

10.2 - Objective

See FSM 5402, Landownership, and FSM 5420.2, Land Purchases and Donations.

10.3 - Policy

See FSM 5403, Landownership, and FSM 5420.3, Land Purchases and Donations.

10.4 - Responsibility

See FSM 5404, Landownership, and FSM 5420.4, Land Purchases and Donations.

10.5 - Definitions

The following terms are used throughout and are defined for the purposes of this chapter.

Administrative Site. An area of land used for National Forest/Grassland headquarters, ranger stations, research stations or laboratories, dwellings, warehouses, guard stations, interpretive centers, or any other administrative uses required for or in connection with conducting authorized activities of the Forest Service.

Agency. A major line or program organization of the U.S. Department of Agriculture (USDA) headed by an Administrator (or equivalent) who reports to the Secretary, Deputy Secretary, an Under or Assistant Secretary, or a General Officer. The Forest Service is an Agency in the USDA.

All Appropriate Inquiries. The process of evaluating a property's environmental conditions and assessing potential liability for any contamination (42 U.S.C. 9601(35)(B); 40 CFR 312).

Appurtenant Right. A right that is accessory, added, or appended to a property, such as a right-of-way, which becomes an inherent part of the property, and usually passes with it when it is conveyed or devised.

Authorized Officer. A Forest Service line officer who has been delegated authority and responsibility to make decisions and perform the duties described in FSM 5404 and FSM 5420.4.

Bargain Purchase. A purchase of private land by the Forest Service that is voluntarily offered by the landowner for less than the approved appraised market value.

Chief of the Forest Service. A career employee who oversees the entire Agency. The Chief reports to the Under Secretary for Natural Resources and Environment (NRE) in the USDA, an appointee of the President confirmed by the Senate.

Condemnation. The legal process by which a governmental body exercises its right of "eminent domain" to acquire private property for public uses. When land is acquired by condemnation, owners shall be paid just compensation and provided with due process, including adequate notice (see, Uniform Relocation Act regulations at 49 CFR 24, subpart B).

Conservation Partner. A third party, such as a non-governmental organization, that assists with a land purchase. A conservation partner may assist by communicating or negotiating with the landowner. A conservation partner may act as a third-party facilitator, which means they may step into the chain of title to expedite a conservation purchase. They may facilitate the purchase by entering into a purchase option with the landowner or buying property outright and then conveying the property directly to the Forest Service.

Deed. A written instrument that, when properly executed (most commonly by signature), delivered, and accepted, conveys title to real property from one party, the Grantor, to another party, the Grantee. For legal effect, most States require the deed be recorded in the county where the property described is located.

Easement. An interest in land conferring the right to use a property for a particular purpose, or restricting the owner's use of a property. The property burdened by the easement is called the servient estate, and property that is benefitted or served by the easement, if any, is called the dominant estate.

Estate. The degree, quantity, nature, and extent of real property interests owned by a landowner, including a fee simple estate, life estate, mineral estate, or surface estate.

Fee Simple. The most complete ownership interest that can be had in real property. Fee simple ownership can be limited by encumbrances or conditions in the deed and by the four basic government powers of eminent domain, escheat, police power, and taxation.

Improvements. Buildings, structures, ditches, or developments located on or attached to property.

Just Compensation. In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken; should put the owner in as good a position pecuniarily as he or she would be if the property had not been taken; generally held to be market value, but courts have refused to rule that is always equivalent to market value.

Land Status. Classification of the Federal lands that are part of the National Forest System (NFS) based on the acquisition and management authorities under which the lands became part of the NFS. West of the Mississippi River, the majority of NFS lands were reserved from the public domain in the early part of the 20th century. The rest of the NFS lands in the United States were acquired by purchase or donation. Some NFS lands were patented and subsequently reacquired by the United States. Land status is tracked in the Land Status Records System (LSRS) database.

Landowner. The owner of property or an interest therein, the owner's authorized representative, or a conservation partner (or other party) who holds a legally binding option to acquire the property or interest therein. One parcel may have several landowners, and one property may be split into multiple interests.

Life Estate. The right to use and occupy a property for the lifetime of a person. It may be alienable or transferable to others during the owner's life (depending on the terms of the conveyance document and State law).

Market Value. For a Federal purchase case, market value is defined as "the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the value, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property." (See Uniform Appraisal Standards for Federal Land Acquisitions 2016, 1.2.4 and 4.2.1).

National Forest System Lands. All National Forest lands reserved or withdrawn from the public domain of the United States; all National Forest lands acquired through purchase, exchange, donation, condemnation, or other means; the National Grasslands and Land Utilization Projects administered under Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010-1012); and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration by the Forest Service as a part of the National Forest System (Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. 1609).

Option. A legally enforceable right, which acts as a continuing offer, given for consideration, to purchase a specific property at an agreed upon price and terms, within a specified time. Upon exercise of the option by the offeree, the option becomes a binding purchase contract. The Forest Service is required to pay one dollar (\$1.00) as consideration for an option (Act of August 3, 1956; 7 U.S.C. 2268a).

Outstanding Right. A right or interest in real property owned by a third party as a result of a previous reservation, judgment, law, ordinance, lease, or deed of conveyance.

Partial Interest. Any right or interest in real property that is less than fee. Examples include easements, mineral rights, utility easements, or life estates. Refer to FSH 5409.13, chapter 40, for more information.

Purchase. The voluntary transfer of real property or interest(s) therein in exchange for consideration.

Purchase Unit. Approved National Forest acquisition areas established by the Secretary of Agriculture prior to October 23, 1976, with concurrence of the National Forest Reservation Commission; or since October 23, 1976, by the Secretary of Agriculture, with oversight of Weeks Act acquisition cases of \$150,000 or more by the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Relocation Benefits. Payment of certain relocation expenses and other assistance to which a tenant on a property acquired by the United States may be entitled under the Uniform Relocation Act and its implementing regulations (42 U.S.C. 4601, et seq.; 49 CFR 24).

Reprogramming. The reallocation of funds from one budget activity to another. Land acquisition reprogramming constitutes the reallocation of funds from one planned acquisition to another. Reprogramming rules vary from year to year and are found in program direction.

Reservation. A right retained by a Grantor when conveying title to land or interests in land.

Right. A claim, including title to or other interest in, anything whatsoever which is recognized and enforceable by law.

Secretary. Unless otherwise noted, the Secretary of the U.S. Department of Agriculture.

Third-Party Facilitators. A third-party facilitator can be a profit or non-profit party providing a service to coordinate a real estate transaction between a private land owner and the Federal Government. The facilitator enters into contractual agreements with the party, generally allowing the facilitator to step into the chain of title and have signatory authority. The facilitator should be familiar with applicable laws, procedural guidelines and public perspectives in the land exchange arena. The role of a facilitator shall be clearly defined in purchase or land exchange proposals.

Title Defects. Any irregularity or encumbrance that would prevent a Grantor from conveying clear title. Defects may include an unrecorded deed; forged deed; deed executed pursuant to forged power of attorney; deed executed in disregard to a revoked power of attorney; deed of a minor or an incompetent person; deed by person having no title but possessing the same name as the rightful owner; deed by a Grantor described as single, but in fact married; deed delivered after the death of a Grantor; claim by an heir whose rights have been barred; dower and courtesy rights; an improper execution or acknowledgement; or an erroneous description.

Title Insurance. Insurance which protects the real property interests of the policy holder (usually the buyer or lender) against loss due to title defects, liens, and encumbrances to real property existing as of the date of the policy.

Warranty Deed. A deed in which the Grantor guarantees that the Grantor holds clear title to land or interest(s) therein, has a right to sell that title to the Grantee, and will warrant it against all future claims unless specifically exempted.

11 - General Guidance For Land Purchases

Most land purchases for NFS purposes are discretionary and voluntary real estate transactions between the United States and a non-Federal party. Consider a land purchase only if it is in the public interest and consistent with the criteria for a land acquisition proposal from FSM 5421.34 and the applicable National Forest/Grassland Land and Resource Management Plan (LRMP) or Land Management Plan (LMP). Also consider whether or not funding for the proposed transaction is available or will be available within a timeframe feasible for completing the project. Identify potential concerns or issues associated with the estate early in the process (for example: split estates, structures, access, hazardous substances, mineral, or water rights). Examples of concerns or issues include how water rights will be put to beneficial use, how specific resources will be protected, and how outstanding rights will be addressed. The Landownership Adjustment Data System (LADS) provides a checklist that may be helpful when processing a land acquisition.

Agency personnel involved with land acquisitions are expected to be knowledgeable of the authorities and policies governing land transactions to ensure adequate protection of the Agency's interests. Personnel need to be able to discuss all aspects of the land acquisition process, relocation benefits, requirements, and timeframes for completion of a land acquisition with the landowner.

11.1 - Land Acquisition Plan Considerations

FSM 1926.15 contains guidance on landownership adjustment planning. FSM 5407 provides guidance on incorporating landownership adjustments into LRMPs/LMPs.

Lands acquired that are located within areas having an administrative designation established through the land management planning process (i.e., LRMP/LMP) shall automatically receive the designation of the area within which they are located without further action by the Forest Service. The lands shall be managed in accordance with the laws, rules, regulations and resource management plans applicable to that area. See 36 CFR 254.3(f) for more information.

11.2 - Types of Land Purchases

There are several types of land purchases based on the estate to be acquired, the characteristics of the proposal, and the statute(s) authorizing the transaction.

11.21 - Fee Simple Purchase

A fee simple purchase is an acquisition of all the rights in a parcel of real property.

11.22 - Partial Interest Purchase

A partial interest purchase is an acquisition of interest(s) less than the fee simple estate in a property. Typical examples include a scenic or conservation easement, road right-of-way, surface right, mineral right, or water right, or any other purchase where the Grantor or other entity retains certain property rights. Refer to FSH 5409.13, chapter 40.

11.23 - Bargain Purchase

A bargain purchase is an acquisition in which the non-Federal land is voluntarily offered for sale by the landowner and acquired at less than the approved appraised market value. In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act (Uniform Relocation Act) (42 U.S.C. 4601, et seq.), the Agency shall offer a property owner just compensation, which can be no less than the amount of the approved appraisal of market value. However, lands may be purchased for less than the approved appraised value if the landowner voluntarily offers a bargain sale after being offered the full amount. A bargain purchase must be a voluntary decision of the landowner, in the public interest, consistent with the applicable National Forest/Grassland LRMP or LMP, and compliant with Department and Agency donation acceptance requirements. The Forest Service market value appraisal for acquisition shall not be used as the basis for determining the value of the donated real property or interests herein. The Forest Service is an “excluded individual” for Internal Revenue Service (IRS) purposes as defined by IRS Publication 561, “Determining the Value of Donated Property.” The landowner must procure their own appraisal for IRS donation purposes. Bargain purchases are a means to leverage acquisition funds.

11.24 - Administrative Site Purchase

Agency direction for administrative site planning and acquisition is provided in FSM 7310 and FSH 7309.11, chapter 20. These directions cover facility master planning; preliminary project (alternative) analysis, including location analysis; and the documents required for use in review and evaluation of proposed acquisition of specific sites. Work with Engineering and Acquisition Management Staffs (AQM) on this process. Depending on the acquisition and funding authorities used, purchases of administrative sites may be authorized outside a National Forest boundary without a purchase unit designation.

The most commonly used authorities to acquire administrative sites are:

1. Department of Agriculture Organic Act of August 3, 1956 (7 U.S.C. 2268a); and
2. Act of March 3, 1925 (16 U.S.C. 555, 557, 572) (note: no more than \$50,000 may be expended under the 1925 Act in any one fiscal year).

Work with the Budget Staff to identify the appropriate funding source to be used for acquisition of an administrative site. Before expending funds to acquire real property, obtain preliminary approval from the Assistant Secretary for Administration when land is valued at more than \$25,000, or for completed buildings when valued at more than \$250,000 (FSH 5409.13, sec. 13), unless exempted, such as purchases with Forest Service Facilities Realignment and Enhancement Act sale (16 U.S.C. 580d note, as amended) (FSFREA) funds. Most acquisitions require Congressional oversight (FSM 5404).

11.25 - Legislated Land Purchases

Examine the Annual Appropriations Act each year for direction regarding land acquisition. At times, Congress passes specific legislation directing the Agency to purchase land or interest(s) in land. When legislation contains direction that conflicts with current regulation or policy, the legislation supersedes the requirements of regulation or policy. To clarify the authority and requirements for a particular legislated land acquisition, consult with the Office of the General Counsel (OGC).

11.26 - Condemnation

A condemnation is not considered a purchase. However, condemnation is sometimes used to complete a purchase that may involve serious title problems or disagreements on value. See FSH 5409.13, chapter 70, for guidance on condemnation procedures.

11.27 - Forest Legacy Program Purchase

In 1990, Congress amended the Cooperative Forestry Assistance Act of 1978 (CFAA) to direct the Secretary to establish the Forest Legacy Program (FLP) to protect environmentally important forest areas from conversion to non-forest uses through Federal acquisition from willing landowners of lands and interests therein, including conservation easements and rights of public access (16 U.S.C. 2103(c)). In 1996, Congress expanded the FLP authority to direct the Secretary to make grants to participating States to carry out the FLP, including acquisition of

lands and interests in lands by the States. The FLP in participating States is administered through State forestry or wildlife agencies. States prioritize areas where FLP dollars will be directed to protect non-Federal forest resources. The FLP funds can be used inside the boundary of a National Forest with the written consent of the Forest Supervisor. The FLP is in the State and Private Forestry deputy area and coordinated through the Office of Cooperative Forestry. Individual National Forests are encouraged to work with the State agency that administers the program in order to look for opportunities where Federal and State land acquisitions may be complimentary. Contact the State and Private Forestry Staff for more information or to access the program guidelines.

11.3 - Land Purchase Phasing

Land purchases may be closed in one action, phased over a period of years, or combined with a land exchange or donation. A transaction may be phased when appropriated funds are insufficient to acquire the entire property at one time, or title curative measures on a portion of the land need to be completed at a later date. In all instances, the Forest Service shall demonstrate clear intent to acquire the entire parcel in phases, and the acquisition values must be based on the contributory value of the larger parcel.

11.4 - Funding Land Purchases

Limited funding authorities are available for land acquisition. The primary funding authority for land acquisitions is the Land and Water Conservation Fund (LWCF). Congress passed LWCF in 1964 and appropriates funds for its use annually (16 U.S.C. 4601). Funds are derived primarily from royalties generated by the Federal leasing of areas of the Outer Continental Shelf for offshore oil and gas extraction. The majority of the funds are allocated competitively through a two-step process:

1. Project proposals for LWCF funds are submitted to the Regional Office for an initial review.
2. Projects selected at the Regional level are forwarded to the Washington Office where they compete with other projects from around the country.

The LWCF project planning occurs at least 18 months before the fiscal year in which the funds are competing for an appropriation. Contact the Regional Office early in the land acquisition process to understand the timeline for when Regional and Washington Office proposals are due.

There are seven “Special Acts” that affect eight National Forests in Arkansas, Utah, Idaho, Nevada, and California. Special Acts funds are appropriated annually from National Forest receipts generated by the occupancy of public land or from the sale of natural resources other than minerals. These funds may be spent on land acquisition either in the same State, or same National Forest, depending on the specific language in the legislation that generated the receipts. These funds must be appropriated annually and, if not obligated at the end of the fiscal year, are returned to the receipts of the affected National Forest(s) and disposed of in the same manner as other National Forest receipts. See FSH 6509.11g, section 45.3, for specific rules about each of the Special Acts.

Receipts from a Sisk Act land exchange (16 U.S.C. 484(a)), Forest Service Facilities Realignment and Enhancement Act sale (16 U.S.C. 580(d) note, as amended), or site-specific legislation may be available for land acquisition. See FSH 5409.13, sections 31.12 and 31.14, and FSH 6509.11g, section 40.11, for specific information about land exchange and sales authorities that may generate acquisition funds.

Land for timber exchanges allow acquisition of interests in non-Federal land in exchange for NFS timber or for the value generated from such designated timber. While considered a land exchange, a tripartite exchange uses funds from timber sales to purchase property. See FSH 5409.13, chapter 30.

12 - Development of a Land Purchase Case

Consistent with LRMPs and LMPs, there are times when the Agency identifies properties for acquisition and approaches the landowner to initiate a purchase proposal. A proactive landownership adjustment program is ideal. However, a potential land purchase also may be initiated by the landowner.

12.1 - Purchase Proposal

Following informal discussions on the merits of a land purchase, the Authorized Officer should obtain a written statement of the landowner's intent to voluntarily offer real property for sale to the Agency, and any proposed conditions to the offer. When working with a conservation partner, the conservation partner's role needs to be clearly defined. If the conservation partner will be a third-party facilitator, then it should be clarified whether the partner will have an option on the property or purchase the property to sell to the Forest Service. This must be done before the Agency invests any resources into evaluation of the proposal.

12.11 - Preliminary Evaluation of Proposal

A preliminary evaluation of the site and the proposed estate to be acquired are necessary to determine if the physical condition and interests offered will be administratively acceptable to the Agency. Consult a Forest Service title specialist or the OGC to determine which conditions are acceptable under the Department of Justice Title Regulations (see sec. 13.1 below), then inform the landowner of any unacceptable conditions. Acquisitions that provide substantial public benefit may be considered even if the proposal contains some minimally undesirable conditions. It is important to thoroughly document the condition of the property and the title as part of the preliminary evaluation. It may be necessary to reject or amend a proposal if, for example:

1. The acquisition is inconsistent with the applicable National Forest or National Grassland LRMP or LMP.
2. The acquisition is not in the public interest.

3. The proposal is not from the actual landowner, the landowner's authorized representative, or a third party that holds a legally binding option.
4. The property is within an area where a purchase is prohibited.
5. The landowner has an unreasonable expectation of value.
6. The conditions of purchase would unduly interfere with management of the property or impair its resource value, such as with an outstanding or proposed life tenancy agreement.
7. The proposal contains provisions for reversion of title to the Grantor or some other restriction on the ability to manage or dispose of the property.
8. The property includes an improvement of no use, interest, or value to the Agency, and the landowner is unwilling to voluntarily remove it prior to acquisition.
9. The tract is so isolated from other Federally-owned or acquirable land as to prevent eventual consolidation.
10. The title is defective and the landowner is unwilling to clear the title, such as with fractional undivided interests.
11. The landowner requires payment by a specific date.
12. The landowner requires preferential treatment of an application for a permit to use NFS land, to purchase resources, or for employment.
13. The property includes potential liabilities for the Agency, such as an impoundment or dam site, area known for contamination from a hazardous substance or petroleum product, or physical mine hazards.
14. The mineral estate is severed from the surface estate. If all or part of the mineral estate is not included in the sale, the Regional Forester shall evaluate the mineral potential and the risk of mineral development. Property with severed mineral rights may only be acquired if the Regional Forester determines that the public benefit of acquiring less than fee title outweighs any identifiable risk of oil, gas, or other mineral development activity.
15. The estate includes water rights that cannot be put to beneficial use by the Agency.
16. The landowner proposes to reserve an interest, other than access to their retained property, such as minerals, water or timber rights, burial plots, hunting leases, or occupancy.

12.12 - Acceptance or Rejection of a Purchase Proposal

Based on the information discovered in a preliminary evaluation, the Regional Forester has the delegated authority to accept or reject a land purchase proposal from a landowner (see FSM 5404.21). Acknowledge a proposal and inform the landowner whether their proposal will receive further consideration, will be rejected, or whether further information is needed. If the proposal is rejected, advise the landowner in writing of the rationale. If the proposal is accepted, inform the landowner about the procedure for a land purchase, including approval and oversight requirements, and how they affect case processing. Include a tentative schedule for examining the property, information regarding National Environmental Policy Act (NEPA) compliance, presenting the appraised value, the time required for title approval, and appropriation availability. Inform the landowner that if a mutually satisfactory agreement on the terms of the acquisition cannot be reached, the Agency will not acquire the property.

Once a determination has been made to proceed with a proposed acquisition, request the following information from the landowner:

1. Contact Information. The landowner shall provide a complete legal name, address, marital status, and authority to sell from every party that has any interest in the title. This information must match what appears in title evidence (for example, the vesting deed). If the contact is a conservation partner, the conservation partner shall provide a written description of its legal relationship with the landowner.

2. Legal Documents. Obtain a copy of the landowner's deed and have a Forest Service land surveyor verify the legal description and acreage on a Land Description Verification - Non-Federal Land (form FS-5400-40). A deed reference may help identify the property when describing metes and bounds tracts using a description other than a survey. Obtain copies of other supporting documents, such as surveys, maps, or plats. If adequate legal descriptions are available, a new survey may not be necessary.

Request that the landowner provide documentation of legal access or any other appurtenant right that is attached to the property. Ask the landowner for copies of any unrecorded documents for uses they have granted to others such as road agreements, haying or grazing leases, timber contracts, advertisement billboards, or hunting leases. Maintenance agreements and other similar obligations that would become the responsibility of the United States are generally unacceptable because of the Anti-Deficiency Act (31 U.S.C. 1341). Also refer to section 13.24 for a discussion of access.

3. Nature of the Property. Ask the landowner to provide information about the general character of the land, including the nature of any improvements, the amount and kind of merchantable timber or minerals, the types of land classes (such as cropland or pasture land), legal access, any authorized or unauthorized uses being made of the property, and other elements that may affect the utility of the property. Photographs of the land and any improvements on the land are useful, so include those in the case file.

4. Permission. Secure written permission from the landowner for the Agency and its agents/contractors to enter and do necessary evaluations on the property under consideration. Written permission to access the property is necessary for site inspections, environmental site assessments, resource surveys, and appraisals.

5. Land Occupancy or Tenants. Inquire about the status of occupancy. In accordance with the Uniform Relocation Act and its implementing regulations, if the land is occupied by a tenant, advise the landowner about relocation benefits to tenants. Relocation benefits do not apply to a landowner who is a willing seller. See section 15.4 for additional guidelines.

6. Potential contamination. Require a landowner to provide a description of any potential contamination and potential liability resulting from the release, storage, or disposal of hazardous substances or petroleum products. See section 13.4 for more information regarding all appropriate inquiries, and FSM 2166.4 for more information regarding liability for contamination.

12.2 - Working with a Conservation Partner (Facilitated Purchases)

Although they are not agents of the United States, conservation partners can work with Congress, private landowners, and non-governmental organizations to obtain appropriated funds for the purchase of key parcels. In many cases, a conservation partner will pay for due diligence. They may also have the ability to work with a landowner who is unwilling to work directly with the United States.

When working with a conservation partner, identify the Agency's acquisition priorities. Express the Agency's expectations regarding the Federal appraisal process, environmental site assessments, and the condition of title before the partner invests in a property. Recognize that conservation partners may have different objectives for public acquisition of the land and the Agency shall ensure NFS objectives are met. A conservation partner should never be encouraged to purchase a property outright, nor can the agency be committed to buy a property until Congress provides the appropriation and authority. A third-party facilitator may choose to purchase a property outright after assessing the risks, but the decision to hold title is at its discretion.

A conservation partner may be useful in situations where:

1. Agency funding is not currently available and a property must be acquired quickly.
2. The landowner requires payment prior to signing an option.
3. There is a need to build public support for a priority land purchase project.
4. Acquisitions involve several private landowners.
5. Timely expertise and assistance is needed to conduct curative title work, perform an environmental site assessment and mitigation, or obtain an appraisal.
6. The landowner is unwilling to sell directly to the United States.

The conservation partner shall disclose its legal relationship with the landowner to the Agency in writing, subject to Agency approval of the adequacy of the disclosure. While the Agency typically does not review the actual terms of the contract between the conservation partner and

the landowner, the conservation partner may be required to disclose the arrangements upon request.

12.3 - Reservations and Outstanding Rights

Only consider proposals subject to administratively acceptable reservations or outstanding rights if clearly in the public interest. The potential effects of reservations or outstanding rights on the Agency's use of or purpose for acquiring the property must be reviewed and clearly understood, and must be approved by the reviewing attorney. Clearly define the terms of any proposed reservation. Any reservation by a landowner is subject to the Secretary's rules and regulations (36 CFR 251, subpart A). See FSM 5470 for more specific guidance.

12.5 - Costs

The Uniform Relocation Act (42 U.S.C. 4653) requires the Agency to directly pay for or to reimburse a landowner for expenses necessarily incurred incidental to conveying real property to the United States, to the extent the Agency deems fair and reasonable. Reimbursable expenses include recording fees, transfer taxes, penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith, and the pro rata portion of any prepaid real property taxes allocable to a period after possession or vesting of title in the United States. A claim for reimbursement must be supported by reasonable documentation. The Agency is not required to pay costs required to perfect the owner's title to the real property. A landowner may waive the right to reimbursement. The Agency may also negotiate with the landowner regarding expenses related to title evidence, boundary survey, and legal description of the property, though reimbursement of these costs is not required under the Uniform Relocation Act.

Where sharing costs helps to facilitate a land purchase, the Agency may negotiate with third-party facilitators, partners, landowners, other agencies, State and local governments, and other interested parties to provide certain products and reports. When a study or report is provided by the landowner or a conservation partner, the Authorized Officer shall make certain the appropriate Agency resource specialist reviews and approves all final studies or reports prior to Agency use.

12.4 - Acquisition of Improvements

Occasionally, a property proposed for acquisition includes an improvement. Generally, it is Agency policy not to acquire property encumbered by improvements because it may commit the Agency to future maintenance obligations. However, in certain situations, it may be desirable to acquire a property with an improvement because of the resource value of the property, or the potential to use the improvement for administrative or recreation purposes.

Prior to committing to the acquisition, the Agency shall assess the purpose for which it is acquiring the improvement, and whether such acquisition comports with the Forest/Grassland LRMP, LMP, and/or Facilities Master Plan. Acquiring property encumbered by an improvement requires additional coordination between the Lands, Environmental Engineering, Heritage, Facilities, and AQM Staffs with respect to the ultimate retention or disposal of the structure.

Under the Uniform Relocation Act, if an Agency acquires an interest in real property with improvements which the Agency requires to be removed, the Agency shall also acquire an at least equal interest in all such improvements (42 U.S.C. 4652(a)). The Agency shall offer market value for tenant-owned real property improvements located on non-Federal land involved in a purchase when:

1. The payment does not result in the duplication of any compensation otherwise authorized by law.
2. The tenant is willing to convey all rights and title to the improvements.
3. The owner of the non-Federal land disclaims all interest in the tenant-owned improvements.

The following must be considered when a transaction includes an improvement:

1. It is preferable that the improvement be removed prior to the Agency accepting title to the property. It may be appropriate to require the landowner to remove the improvement as a condition of the acquisition. Consult with a specialist in the Heritage Staff before deciding whether and how to remove improvements.
2. If the landowner cannot remove the improvement and it contributes value in the appraisal, the improvement must be conveyed to the United States.
3. If the Agency is considering removing the improvement after the United States has taken ownership, consult with Heritage Staff to ensure compliance with the National Historic Preservation Act. Also, consult with the AQM Staff to determine the appropriate procedures for off-site removal, demolition, or salvage.
4. Reservations by a landowner should be avoided. In some situations, a landowner may wish to reserve an interest in and/or use of some portion of the property, including improvements, while conveying the remaining interests to the United States. This is rarely acceptable and should not be considered without advance consultation with the Regional Forester and approval by OGC. Such a reservation by the landowner shall be in the public interest and is subject to the Secretary's rules and regulations that govern the exercise of reserved rights (refer to 36 CFR 251, subpart A). The appraisal will reflect the impact on value due to the reservation. See FSM 5470 for more specific guidance.
5. No commitments may be made concerning the issuance of a special use authorization for the use of an improvement following acquisition by the Agency. Any requests for use and occupancy of the property to be acquired must be made through the standard application and evaluation procedures for special uses (refer to 36 CFR 251, subpart B). The Agency shall never imply or guarantee an authorization will be granted to a particular individual.
6. For administrative site acquisitions, see sections 11.24 and 14.1.

7. Before recommending acquisition of a property with an improvement, the Authorized Officer shall document all relevant information, including:

- a. Pre-acquisition environmental site assessment to identify risk, in compliance with the all appropriate inquiry requirements;
- b. Expectations and responsibilities associated with acquiring historic resources in the event they are eligible for the National Register of Historic Places;
- c. The value of the improvement relative to the value of the unimproved land; and
- d. Any issues pertaining to the acquisition of an improvement which the Agency plans to remove.

13 - Processing Purchase Cases

This portion of the chapter examines steps necessary to analyze and document a purchase case.

13.1 - Preliminary Title Commitment

The Department of Justice, Environment and Natural Resources Division, oversees the regulations guiding Federal land acquisition, including standards for determining sufficiency of title. It periodically updates a publication entitled “Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions” (DOJ Title Regulations), which is available on the DOJ website at: <https://www.justice.gov/enrd/selected-publications>. The DOJ Title Regulations direct acquiring agencies to obtain a preliminary title commitment or equivalent record title evidence from a competent title insurance company. The DOJ Title Regulations generally consider a title insurance company competent if it is authorized by state law to conduct business in that jurisdiction and hold membership with the American Land Title Association (ALTA) or Texas Land Title Association (TLTA).

A preliminary title commitment should be obtained immediately after the Regional Forester has decided to proceed with a purchase proposal. DOJ Title Regulations do not require a specific format for the title commitment, so check with an Agency land law examiner or OGC for questions on current format standards. At a minimum, the commitment must:

1. Cover the entire interest to be acquired.
2. Disclose the full name of each person and entity with a vested interest in the property.
3. Identify all documents affecting any interest to be acquired.
4. Provide addresses for all parties with or claiming an interest.
5. Include legible copies or transcriptions of all recorded instruments affecting the property.

6. Identify all local taxing authorities, including lien due dates for each, and amounts for all assessments unpaid as of the date of the commitments.
7. Allow sufficient time for closing without expiring and requiring purchase of a new commitment.

All appropriate Forest Service specialists should review the title evidence and associated documents to verify negotiations are with the landowner of record; guarantee that the estate is correctly defined; and identify unacceptable outstanding rights and title exceptions. For more information regarding title, see section 16.

Prior to the initiation of the appraisal, the estate to be acquired must be clearly defined and agreed upon and any outstanding rights must be identified. Outstanding rights determined to be administratively acceptable are documented on the Certificate of Use and Consent (form FS-5400-29), which is signed by the Forest Supervisor.

13.2 - Reviews

Depending on the case, various reviews and reports may be needed, including boundary management, mineral potential, water rights, and access. Also, compliance with NEPA is necessary.

13.21 - Boundary Management Review

Property to be acquired must be legally described so that title may be conveyed. Request an Agency land surveyor to conduct a boundary management review that includes the legal description, acreage verification, boundary locations (both record and field), and a determination of additional survey needs, if any. The boundary management review must be documented on a Land Description Verification - Non-Federal Land (form FS-5400-40). The legal description must match the description in the title evidence and appraisal. Boundary management review is always required.

13.22 - Mineral Potential Report

When the estate to be acquired does not include the mineral estate, the landowner shall make every effort to obtain the outstanding interests. If unsuccessful, a mineral potential report must be prepared which evaluates the nature and extent of all minerals, oil and gas, sand and gravel, and geothermal, as well as the probability of development. The Regional Forester or authorized officer shall evaluate and document the risk of mineral development which may interfere with the purposes for which the property is being acquired. Regions may have supplemental guidance covering acquisition of parcels where the mineral estate is outstanding. See FSM 2830 and FSM 5470 for guidance on acquiring properties with outstanding rights, such as mineral reservations. Follow DOJ Title Regulations for mineral interests, which detail report requirements; allow that agency personnel may prepare reports with OGC approval; and, if the Agency is not acquiring all mineral rights, requires a determination of non-interference.

13.23 - Water Rights Analysis

Complete a water rights analysis that addresses ground and surface water rights, as well as water rights ditches and structures, associated with the property considered for acquisition. Request a water rights report from the State engineer. Obtain copies of all pertinent documents, such as applications, permits, decrees, certificates, or other water rights documents that may be used in the state where the property is located. A water rights analysis must include the rights to be acquired, as well as identify and address any outstanding rights. Follow DOJ Title Regulations for water rights, which detail water rights transactions, and require OGC approval of the person preparing title evidence of water rights.

An Agency hydrologist or water rights specialist should:

1. Render an opinion of the current status and the quality and quantity of the water rights on or affecting the property to be acquired.
2. Report intended use of the water to be acquired by the United States.
3. Determine the actions necessary to effectively transfer, utilize, and preserve ownership of water rights by the United States. It is the Forest Supervisor's responsibility to ensure that the water rights can be put to continued beneficial use, to prevent loss or abandonment of those rights under State law in those States with a "use it or lose it" regime.
4. Estimate the costs associated with the use and management of the water rights if they are acquired by the United States.

Ensure the necessary water rights information is included in the Request for Appraisal Services (RFAS) package.

13.24 - Access

Four components of access should be reviewed when considering a parcel for acquisition:

1. Legal access from a public highway, street, or road to the property for the Forest Service and users of NFS lands;
2. Access needs of the landowner across the property and/or adjacent NFS lands;
3. Outstanding access rights by other users across the parcel; and
4. Uses not of record.

Any of the four can have an effect on the value of the property and implications for its future use. Consult an Agency right-of-way specialist or a certified cost-share specialist and Forest travel management plan as appropriate.

Review the preliminary title commitment and other title evidence to evaluate the adequacy of legal access to meet management needs of the Agency, including use by the public. Legal access is not always reflected in the title evidence, because access easements may only be described in

documents for the encumbered property, not the one being accessed. The appurtenant easement may contain unacceptable provisions, such as requirements for maintenance or indemnification. The United States cannot be obligated to a road maintenance agreement that commits the United States to future expenditures. Appurtenant easements often only provide access to that specific property, possibly preventing use of the property to access other properties, including adjacent Federal lands. Under the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3210(a); 36 CFR 251.111, et seq.), the Agency is required to provide adequate access to non-Federally owned inholdings within National Forests to secure the reasonable use and enjoyment of the inholdings. All access rights needed by the United States and owned or controlled by the landowner must be acquired during the initial acquisition. Clearly distinguish between public and private roads.

Future access needs of the landowner must be considered early in evaluating the proposal. Any access needs must be specifically outlined for acceptability to the United States. Reservation of access will be subject to the Secretary's regulations. The appraisal must address the effect of an access reservation across the property. Reservation language must be included in the Forest Service purchase option.

Evaluate outstanding access rights of record to determine consistency with future management; the impact of previously developed access and potential impact of possible future routes; and each road or trail on the property that is not recorded as a potential future title claim. Ensure that any potential prescriptive rights are resolved by the landowner prior to acquisition, either through perfecting the right or ejecting the user, documented on the Certificate of Inspection and Possession, and addressed in the Certificate of Use and Consent form.

13.3 - Certificate of Inspection and Possession

The Certificate of Inspection and Possession (CIP) is a form mandated by DOJ and available in the DOJ Title Regulations. The CIP is based on an interview of the landowner and all parties in possession or making use of the land and includes a physical inspection of the property. Its purpose is to identify the basis for possession or use of the land by anybody other than the landowner. This allows the Agency to take steps to extinguish potential outstanding rights prior to acquisition. The DOJ Title Regulations recommend completing a CIP soon after a property is identified for acquisition and again immediately prior to recording a deed. This allows early detection of potential issues and time to cure, as well as a final opportunity to confirm nothing has changed before closing. A reviewing attorney may modify the inspection schedule, but only DOJ may approve waiving a CIP in its entirety.

The DOJ Title Regulations list some of the most common items discovered during inspections performed for the purposes of a CIP. These include: occupied improvement; roads, trails, bike and equestrian paths; utility lines; fences; wells; personal property; cemeteries; ditches, dikes, and tile lines; evidence of mineral exploration; and rights-of-way.

The CIP allows for the inclusion of attachments that further explain any findings. Two optional Forest Service forms may also be used to supplement the CIP:

1. Certificate of Possession (form FS-5400-37); and

2. Supplemental Certificate of Possession (form FS-5400-38).

Though a template of the CIP appears in the DOJ Title Regulations, an agency may develop its own version provided it includes all the investigations and representations found in the template and is approved by the reviewing attorney. Check with a Forest Service land law examiner or OGC to verify the correct version of the CIP is used.

13.31 - Property Inspection, Use, and Occupancy

A field inspection of the property must be made to determine actual use, occupancy, and location of both items of public record and those that are not of public record. Most items of public record are found in the title evidence. The title evidence will have information about ownership, occupancy and use on the property, including road or utility easements, rights-of-way, water rights, agricultural or hunting leases, and/or liens against the property. Bring a copy of the title evidence to the inspection to keep track of the items that need to be substantiated on the ground. Outstanding rights are documented on the Certificate of Use and Consent (form FS-5400-29). During a property inspection, record everything present whether or not it is documented in the title evidence. Uses that may not be of record include any evidence of occupancy, use or access such as homes, outbuildings, billboards or signs, crops, livestock, roads improved or unimproved, garbage, hazardous materials, and timber or mining activities. Include detailed maps, photos and GPS coordinates in the case file to document all findings. Personal discussions with the landowner are necessary to thoroughly document the condition and uses on the property. Often these discussions help reveal or resolve issues that may not be reported in the title evidence. Use those discussions to cure or eliminate unacceptable uses on the property before the appraisal and vesting title in the United States.

13.32 - Certificate of Use and Consent

The appropriate Forest Service specialist should evaluate all outstanding interests and inform the Authorized Officer of any potential impacts those interests may have on future use and management on the property. Outstanding rights are identified in the title evidence and documented on the Certificate of Use and Consent (form FS-5400-29). The Certificate of Use and Consent identifies those items of record and whether they are acceptable for inclusion in the final title policy. Use this form to also document the associated water and mineral rights.

The Certificate of Use and Consent must be amended prior to closing if there are changes or modifications to the title evidence.

13.4 - All Appropriate Inquiries

The U.S. Environmental Protection Agency promulgated all appropriate inquiries (AAI) regulations (40 CFR 312), as required by the Brownfields Amendment to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.). The AAI regulations encourage a property owner to evaluate the property for potential contamination and assess potential liability present on the property. In addition, in order to claim protection from liability under CERCLA, the Agency's due diligence for land acquisitions must

conform to the AAI regulations. USDA policy requires the Forest Service to minimize or avoid environmental liability, and to ensure that USDA meets the “innocent landowner” and “bona fide prospective purchaser” requirements of CERCLA when acquiring real property (DM 5600-001, ch. XIV, Nov. 18, 2004). Evaluate the potential for liability associated with acquisition of contaminated property prior to acquisition. Work closely with a regional environmental engineer to comply with all requirements and for review of the reports. If potential contamination is identified through a Phase 1 Environmental Site Assessment (ESA), a Phase 2 ESA may be needed. Guidance related to ESAs is found in the Pre-Acquisition Environmental Assessment Guidance for Federal Land Transactions, Department of Interior Environmental Compliance Memo 10-2 (ECM), jointly developed by the Department of the Interior and USDA.

The purchase option forms used by the Agency contain an indemnification provision that provides protections from CERCLA liability for the United States, and limited protections for certain third-party partners, should potential contamination be identified. In that provision, the vendor agrees to indemnify the United States for all costs and damages necessary to remedy any contamination on the Property, which can be attributed to the vendor’s period of ownership, and which is required to bring the property into compliance with all applicable Federal, State, or local health, safety, and environmental laws. In the case of a vendor who has acquired title to the property at the written request of the United States, the vendor shall agree to indemnify the United States only for contamination or violation which occurred during the time vendor had title to the property, and is not attributable to actions of the United States. This limited indemnification is meant to recognize that third-party partners holding land on behalf of the United States may enter into the chain of title for a very short amount of time (days or weeks), and want to be shielded from liability for CERCLA violations that occurred before they entered the chain of title.

If the AAI evaluation determines there is no hazardous substance or threat on the property, a party that enters into a purchase option may request that the Agency waive the indemnity provision. Only the Regional Forester shall approve the waiver of the indemnity provision in a Forest Service purchase option, and only after consultation with OGC.

13.5 - Notification to County and Congressional Delegations

Notify the county and the Congressional delegation of the proposed land acquisition. Document the notification of these entities in the case file, and consider any responses received during the processing period. See exhibit 01 for the Sample Letter of Notification to Federal, State, Local and Congressional Contacts. Notification of the proposed land acquisition should also include Federally-recognized tribes and Alaska Native Corporations per a consultation policy agreement.

13.5 – Exhibit 01

Sample Letter of Notification to Federal, State, Local, and Congressional Contacts

File Code: 5420-2

Date:

The Honorable <name>
United States House of Representatives (or Senate)
<location> Office
<address>
<City>, <State> <Zip code>

Dear Congressman (Senator) <Name>:

This letter is to inform you of our intent to acquire lands through the Land and Water Conservation Fund from the <landowner name or conservation partner>. These lands are in or near the <name of community>, located in/near <geographical location>. The parcel(s) of land comprise approximately <number of> acres, and are shown on the enclosed maps.

The lands are undeveloped and unoccupied with the exception of <cabin, etc if applicable>, (which will be placed under special use authorization upon conveyance). <Geographic area> and an established trail system on the lands to be acquired are <briefly list reasons to support purchase (trail, access, T&E etc)>. These lands adjoin areas of the Forest designated for <reference designation in land management plan and how it relates to this specific purchase>, and will be an important addition for <more reasons> management for the area.

Provide a general description of the vegetation, recreation, fish and wildlife for the area to be acquired. (should be in the feasibility analysis)

If you have any questions about this proposal, please contact <lands staff> at (xxx) xxx-xxxx.

Sincerely,

/s/ <signature>
<NAME>

Forest Supervisor

Enclosures

cc: <forest lands staff>, <regional lands staff or director>, <Authorized Officer>

13.6 - National Environmental Policy Act Compliance

There are NEPA compliance responsibilities associated with landownership adjustment cases, including exchanges, purchases, donations, conveyances, rights-of-way, and Small Tracts Act cases. All proposed land adjustments must follow the NEPA processes at 36 CFR 220 and guidance in FSH 1909.15.

Projects that may be categorically excluded from documentation in an environmental assessment or environmental impact statement are described in 36 CFR 220.6. Categories of actions for which a project or case file and decision memo are not required are described under 36 CFR 220.6(d). In categories of actions where documentation is not required, it is still strongly encouraged to maintain a supporting record, such as a categorical exclusion checklist, on file. Categories of actions for which a project or case file and decision memo are required are described under 36 CFR 220.6(e).

13.7 - Valuation

Proceed with an RFAS when the title evidence affirms a landowner's title, the property inspection is complete, and the proposal is acceptable to the Authorized Officer (see FSH 5409.12 for sample requests of specific types of assignments). The estate to be acquired, including outstanding rights and those reservations determined to be administratively acceptable, must be clearly defined prior to initiation of an appraisal. If there are conditions present but they are not of the public record, include that information in the RFAS. Provide the assigned review appraiser with a copy of the title evidence and the initial CIP. Ensure that all changes to the condition of title from that existing in the title evidence are included in the RFAS. Ultimately, the estate to be appraised must match the estate to be acquired.

Work with the landowner and the assigned review appraiser to ensure all the information necessary to complete an appraisal assignment is accurate and up-to-date. The Authorized Officer may allow a non-Federal party to pay for appraisal services when Forest Service funding is not available if the Agency finds that allowing a non-Federal party to pay for the appraisal services would be in the best interest of the government and it complies with FSM 5410 and FSH 5409.12. Appraisals paid for by non-Federal parties must comply with USDA policies regarding acceptance of donations (see DR 5200-003). Failure by the contracted private appraiser to follow Forest Service valuation procedures will result in the submitted appraisal report being considered an unsolicited report, and it will be returned without review.

Pursuant to the Uniform Relocation Act, a landowner must be given an opportunity to accompany the assigned review appraiser during the inspection of the property. Upon written request by the landowner, a copy of the Agency's approved appraisal report may be released at the discretion of the Regional Director of Lands. If a landowner is authorized to contract for the appraisal report, an agreement as to the distribution of the report must be reached prior to beginning the appraisal. Direction for appraisal requests is contained in FSH 5409.12.

13.8 - Landownership Adjustment Data System

The Landownership Adjustment Data System (LADS) is a fully integrated case management application that is used to process and report land ownership adjustments. LADS supplies key information to the Land Status Record System (LSRS) for reporting land adjustment accomplishments. LADS should be maintained concurrently as the purchase case progresses, including electronically sharing case related documents, maps, and photos with the land status staff. The completion of a land purchase must be reported in the fiscal year in which the documents of purchase by the United States are recorded.

14 - Acquisition Oversight

The Chief reserves the authority to review and/or forward to the Secretary for approval any proposed land acquisition that, in the Chief's judgment, is precedent setting and/or for which the Chief directs that higher level review and approval are merited.

14.1 - Administrative Sites

The Under Secretary for Administration shall approve any action (other than appraisal, which is required to determine market value) or public announcement about the purchase of an administrative site where the total estimated market value of the site (land only) is \$50,000 or more, or the site contains a completed building having an estimated cost of \$500,000 or more. A request for approval must be submitted to the Washington Office Lands and Realty Management Staff, which will coordinate a request with the AQM and Engineering Staffs. This requirement is based in Executive Order (E.O.) 12072 (Federal Space Management), E.O. 13327 (Federal Real Property Asset Management), and Agriculture Property Management Regulations (AGPMR) 110-73.255-5005.3. Prior approval is not required for real property specifically identified in an appropriation authority (in statute or report language) or authorized by specific administrative site legislation, including sites purchased using funds from disposals using the Forest Service Facilities Realignment and Enhancement Act (16 U.S.C. 580(d), as amended).

All documents must be submitted electronically through the correspondence database and must print on a standard (8 ½ x 11-inch) page size. The following must be submitted to the Washington Office Director of Lands:

1. Information required pursuant to AGPMR 110-73.255-5005.3 (ex. 01);
2. when the proposed acquisition is an addition to an existing administrative site, a description of the existing site (including size, improvements, value of total investment, population of the community), and other general information for the area; and
3. preliminary project analysis (FSM 7310 and FSH 7309.11, ch. 23).

14.1 - Exhibit 01

Information Required Pursuant to AGPMR 110-73.225-5005.3

110-73.255-5005.3: Acquisitions Requiring Secretarial Approval.

(a) Approval of the Assistant Secretary for Administration will be obtained prior to starting any action (except an appraisal, where required) or making any public announcement on the purchase, exchange, or acceptance of a gift (see DR 5200-3) of real property when the total estimated fair market value of the site (land only) is \$50,000 or more, or the site contains a completed building having an estimated cost of \$500,000 or more. Approvals are applicable only to acquisitions of real property that are not specifically identified in appropriation authorities (in statute or report language) or authorized by specific administrative site exchange or sales laws.

(b) Requests for approval will be submitted to the Office of Procurement and Property Management (OPPM), and will contain the following information (in the event of an exchange, data will be submitted for all properties involved):

- (1) The appraised fair market value (AFMV) of land and improvements as determined by a qualified appraiser made pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions published by the Interagency Land Acquisition Conference. If the AFMV is not available at the time the request for Departmental approval is made, the estimated fair market value (EFMV) of the property will be submitted, and the AFMV will be submitted as soon as it has been established.

For gifts of real property as defined in DR 5200-003, an appraisal is not required; however, for real property inventory and accounting purposes an estimated value should be determined. This estimated value for inventory and accounting purposes may be determined from sources such as tax assessment records or consultations with local real estate professionals.

- (2) Legal description of the land and explanation of improvements, if any.
- (3) The estimated cost.
- (4) An explanation of the specific use to be made of the property and description of the program for which it is to be used.

14.1 - Exhibit 01--Continued

- (5) The source of funds to be used and the legal authority thereof.
- (6) The relationship of the property to other facilities of the agency in the immediate vicinity; the State or general locality; or the region, where applicable.
- (7) A brief description of the real property owned or controlled in the immediate vicinity by other agencies of this Department.
- (8) Certification that there are no other properties in Government ownership suitable for the purpose.

14.2 - Purchase Units (Weeks Act)

The Weeks Act may only be used to acquire land or interests in land in states which have consented to Weeks Act acquisitions (16 U.S.C. 515). Weeks Act purchase units cannot be established in Alaska, Arizona, Connecticut, Delaware, Hawaii, Kansas, Maryland, Massachusetts, New Jersey, New York, and Wyoming because they never passed the required matching consent legislation.

14.21 - Background Information

Purchase units were originally created as a mechanism for approving the acquisition of land under the Weeks Act.

Prior to 1976, under the Weeks Act, the Secretary recommended lands for purchase, and the National Forest Reservation Commission (NFRC) was authorized to approve and purchase the lands. In 1976, the Weeks Act was amended by Section 17(a) of the National Forest Management Act (Pub. L. 94-588, sec. 17(a)), which transferred all functions of the NFRC to the Secretary of Agriculture. As amended, the Weeks Act authorizes the Secretary to “examine, locate, and purchase such forested, cut-over, or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber.” 16 U.S.C. 515.

The establishment of a purchase unit is necessary when lands are acquired under the authority of the Weeks Act with LWCF funds and the lands are not inside or adjacent to the exterior boundaries of a National Forest. Weeks Act lands automatically become NFS lands upon acquisition. Once a sufficient amount of land is acquired under the Weeks Act within an established purchase unit, the Secretary is authorized to administratively adjust National Forest boundaries to include those lands.

Land may be acquired inside a purchase unit with funding from LWCF (54 U.S.C. 200306). In accordance with section 7 of LWCF, appropriations may be utilized to acquire land that is located within a Wilderness Area, inside the exterior boundaries of a National Forest as such boundaries existed when LWCF was passed in 1965, or within a purchase unit. LWCF appropriations may also be utilized to acquire not more than 3,000 acres of land per National Forest that is “outside but adjacent to an existing [N]ational [F]orest boundary.” (54 U.S.C. 200306(a)(2)(B)). Lands acquired with LWCF funds inside of an approved purchase unit do not count against the 3,000-acre cap. For further direction related to boundary modification, refer to FSM 5451.

The establishment of a purchase unit may not be necessary when lands are to be acquired under other authorities such as the 1956 Department of Agriculture Organic Act (1956 Act) (7 U.S.C. 2268a). The 1956 Act serves as the primary authority for administrative site acquisitions and LWCF purchases where the Weeks Act or other specific authorities do not apply. The 1956 Act authorizes the Department of Agriculture to acquire land or interests therein as necessary to carry out its authorized work. However, no acquisition may be made under the 1956 Act, unless provision is made in the applicable appropriation or other law, such as LWCF. There are no geographic limitations as to where the Secretary of Agriculture can acquire land under the

1956 Act, but such acquisitions may nonetheless be limited by the funding authority, such as LWCF. Land acquired with LWCF funds that are not part of a purchase unit cannot exceed 3,000 cumulative acres, and the boundary is not adjusted to capture acreage purchased under the 1956 Act.

14.22 - Process Requirements

In order to establish a purchase unit, the following documents must be submitted to the Washington Office Director of Lands and Realty Management:

1. A written recommendation from the Regional Forester for the establishment of the purchase unit.
2. An establishment report which documents that acquisition of the land within the proposed purchase unit would comply with the following:
 - a. The intent of the Weeks Act (the land to be acquired is forested, cut-over, or denuded land within the watershed of a navigable stream, and acquisition of the land is necessary for the regulation of the flow of the navigable stream or for the production of timber).
 - b. The goals and objectives of the applicable National Forest LRMP or LMP and the Forest's landownership adjustment plan.
 - c. The objectives of the Forest Service Strategic Plan.
3. A legal description of the proposed purchase unit boundary (set forth on a Legal Description Verification form).
4. Map(s) that clearly identify the proposed purchase unit boundary, the land proposed for acquisition, and proximity to other NFS ownership/boundaries. The map(s) must follow the current legislative mapping requirements. Please visit the Washington Office Lands and Realty Management intranet site for more information and tools to create legislative maps at <http://fsweb.wo.fs.fed.us/lands/index-legmap.shtml>.

A decision memorandum will be prepared by the Washington Office and submitted with the package proposing establishment of the purchase unit to the Under Secretary of Agriculture for approval. Upon receiving the Under Secretary's approval, the Region shall publish a notice of the purchase unit designation in the Federal Register.

14.3 - Congressional Oversight for Weeks Act Purchase Cases

In accordance with Section 17(b) of the National Forest Management Act of 1976 (16 U.S.C. 521(b)), a 30-day oversight review by the U.S. House Committee on Agriculture and the U.S. Senate Committee on Agriculture, Nutrition, and Forestry is required for those land purchase cases conducted under the Weeks Act when the value of the land to be acquired is \$150,000 or more. In addition to the Congressional oversight, in accordance with the delegations of authority for certain departmental officials (see 7 CFR 2.20(a)(2)(ii) and 7 CFR 2.60(a)(2)), approval by

the Under Secretary for Natural Resources and the Environment is required for acquisition of land under the Weeks Act when the value of the land to be acquired is \$250,000 or more. If a proposed acquisition is not approved, the Forest Service unit processing the acquisition should coordinate with the Washington Office Lands and Realty Management Staff to determine whether the acquisition should be modified or discontinued.

For additional direction related to the use of the Weeks Act authority in purchase cases, refer to FSM 5420.11(a).

14.31 - Less Than \$150,000: Congressional Oversight Not Required

The Regional Forester has the authority to approve acquisitions under the Weeks Act without Congressional oversight when the value of the land to be acquired is less than \$150,000.

14.32 - \$150,000 or More, but Less Than \$250,000: Congressional Oversight Required

The Regional Office shall submit the request for the 30-day oversight review to the Washington Office via the correspondence database. All documents must be submitted electronically and formatted on a standard (8 ½ x 11-inch) page size. The request package must contain the following items:

1. LADS case summary document.
2. Map(s) that clearly identify the land to be acquired and proximity to other NFS ownership/boundaries. The map(s) must follow the current legislative mapping requirements. Please visit the Washington Office Lands and Realty Management intranet site for more information and tools to create legislative maps at <http://fsweb.wo.fs.fed.us/lands/index-legmap.shtml>.

The Washington Office shall submit the case package to the Congressional committees for the 30-day oversight. The Regional Office shall be notified when the 30-day oversight period ends. At that time, the Region may proceed with the processing of the case.

14.33 - \$250,000 and More: Congressional Oversight and NRE Approval Required

The Regional Office shall submit a request for the Under Secretary's approval and 30-day Congressional oversight review to the Washington Office via the correspondence database. All documents must be submitted electronically and formatted on a standard (8 ½ x 11-inch) page size. The request package must contain the following items:

1. Draft decision memorandum for the Under Secretary's approval (a sample template is available from the Washington Office). This document must contain the following:
 - a. A description of the property to be acquired and a brief history of the purchase case;
 - b. A discussion of the public benefits of the acquisition;

- c. A discussion of the mineral potential report;
 - d. A discussion of the relationship of the acquisition to the applicable National Forest or National Grassland LRMP or LMP;
 - e. A discussion of outstanding interests and why they are acceptable;
 - f. A discussion of the relationship of the acquisition to the Forest Service Strategic Plan; and
 - g. A summary of the appraisal findings.
2. LADS case summary document.
 3. Map(s) that clearly identify the land to be acquired and proximity to other NFS ownership/boundaries. The map(s) must follow the current legislative mapping requirements. Please visit the Washington Office Lands and Realty Management intranet site for more information and tools to create legislative maps at <http://fsweb.wo.fs.fed.us/lands/index-legmap.shtml>.

For phased purchase cases, the decision memorandum must address all phases of the acquisition and set forth the estimated acreage and the contributory market value of the larger parcel associated with each phase.

The Washington Office shall submit the case package to the Congressional committees for the 30-day oversight. The Regional Office shall be notified when the 30-day oversight period ends. At that time, if the Under Secretary approves the acquisition, the Region may proceed with the processing of the case.

14.4 - Reprogramming of Land Purchase Funds

Reprogramming moves funds from one named purchase project to another. Consult the financial management section in the annual budget program direction for any specific fiscal year reprogramming rules, as they may change from year to year. The Regional Forester shall submit a letter of request to the Washington Office Director of Lands and Realty Management for reprogramming. The letter must include rationale and benefits for the reprogramming. The Washington Office shall determine whether reprogramming is feasible.

15 - Presenting the Appraised Value and Conditions For Option Acceptance

15.1 - Discussing Appraised Value with the Landowner

After review and approval of the value for Agency use, the Agency provides the Statement and Summary of Estimated Just Compensation to the landowner (ex. 01), in accordance with the Uniform Relocation Act. The Statement and Summary of Estimated Just Compensation sets forth the approved market value and indicates that the Agency seeks to acquire the real property. It is advisable to personally present and discuss the documents involving the valuation.

Give the landowner a brief written summary explaining how the value of the property was determined and quote the approved appraised market value. The review appraiser may assist the landowner in understanding the appraisal process and describing how the conclusions were reached. The review appraiser shall consider and respond to any information the landowner believes was not appropriately considered in the appraisal.

15.1 - Exhibit 01

Statement and Summary of Estimated Just Compensation

STATEMENT AND SUMMARY OF ESTIMATED JUST COMPENSATION TRACT K-1603

Description of Property: Being a portion of the same vacant tract of land containing 616.01 acres, more or less, conveyed by Alonna J. Howell, et al., to The Conservation Fund, a Maryland non-profit corporation, a one-half undivided interest, and to The Nature Conservancy, a District of Columbia non-profit corporation, a one-half undivided interest, by Warranty Deed dated December 16, 2016 and recorded on December 19, 2016 at Polk County Deed Book 300 Pages 164-174. Situated in the First Civil District Polk County Tennessee, bounded on the West, North and East by USA Tract K-2, and on the South by the lands of Kenneth Higgins, Ken Higgins et ux Elizabeth, Charles Edwards and Phillis Miller, and USA Tract K-2.

Boundary survey by Lane S. Bishop, RLS 1324 dated August 18, 2016; plat of record in Plat Book PB 17 Page 44 of the Polk County Tennessee Register's Office.

Subject property is identified as Parcel 001.00 of Tax Map 121 of the Polk County tax records.

Historically identified as section 16, fractional township 1 south, range 3 east; of the basis line for the Ocoee District. Being the same property purchased by W. Harvey Howell (now deceased) from the Polk County Board of Education by Warranty Deed recorded October 16, 1987 in Deed Book 133 Pages 187-188. The parcel was reserved for the use of schools by the General Assembly of the State of Tennessee October 18, 1836.

Reservations: None

Outstanding Rights: Being the following:

Rights or claims of parties in possession not shown by public records; any discrepancies, conflicts, encroachments, servitudes, shortages in area and boundaries or other facts which a correct survey would show; title to that portion of subject property embraced within the bounds of any cemetery, grave or graveyard, with all rights of ingress and egress thereto; rights of upper and lower riparian owners in and to the use of and the continued uninterrupted flow of Taylor's Branch which flows through subject property; lack of access to a public road; matters depicted or disclosed by map of record in Plat Book 17 Page 44 in the office of the Polk County Register of Deeds.

15.1 - Exhibit 01--Continued

Owners of Record:

The Conservation Fund, a non-profit Maryland Corporation
c/o Carolyn McCoy, Senior Paralegal
The Conservation Fund
1655 N. Ft. Myer Drive, Suite 1300
Arlington, VA 22209

The Nature Conservancy, a non-profit District of Columbia Corporation
c/o Susan Marchman, Senior Paralegal
Southern Resource Office
334 Blackwell Street
Suite 300
Durham, NC 27701

Effective Date of Value: April 25, 2016

Date of Appraisal Review Report: June 20, 2016

Date of Supplemental Appraisal Review Report: February 1, 2017

Estimated Just Compensation: \$862,414.00 (Lump sum) for 616.01 acres, more or less, tract of land, being Tract K-1603.

Approved Basis: The appraisal was prepared by a qualified appraiser using methods and techniques in compliance with The Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice. The estimate is based on the appraiser's examination of the land considering its highest and best use, and values of comparable properties recently bought and sold in the private market. The Sales Comparison method was used to estimate market value based on the highest and best use premise.

15.2 - Considerations to Discuss with the Landowner before Presenting the Option

1. The Forest Service is required to pay only one dollar for consideration for an option (Act of August 3, 1956; 7 U.S.C. 2268a). The Secretary is not obligated to exercise the option. Advise the landowner that the term of the option is merely the time period in which the Agency decides whether or not to exercise the option. There is no set timeframe for closing on the option once executed by the Secretary, but give the landowner an estimated closing date.
2. Advise the landowner that if the Agency decides to purchase the property, it will make payment only after the preliminary title opinion (PTO) is issued, actions have been taken to comply with a conditional PTO, and the deed has been accepted.
3. In certain cases, it may be advantageous to assist the landowner in clearing title encumbrances as this may reduce the time required to close a case. However, the Agency is not required to pay costs required to perfect the landowner's title.
4. Advise the landowner of available benefits under the Uniform Relocation Act, including reimbursement of certain costs if the property is purchased by the Agency, such as any necessary escrow fees and taxes. The landowner may willingly share costs of closing.
5. Advise the landowner of any required environmental clean-up and remediation, including removal of debris and/or structures.

15.3 - Land Purchase Option and Contract

A purchase option is a landowner's continuing offer to sell for a stated period. It identifies the property to be acquired, the price, and the terms and conditions governing the transaction. It gives the Agency the right to elect to exercise the option to buy and states the period during which such election must be exercised. During the stated period, the landowner agrees not to sell to anyone else or substantively alter the property. It gives the Agency an exclusive right to exercise the option and make it a binding purchase contract. The purchase price is fixed for the stated period of time once the option is signed by the landowner. The option becomes a binding purchase contract once it is exercised by the United States.

15.31 - Option Preparation

Option preparation prevents disagreements over the terms of the purchase. When all parties have agreed upon the terms of the purchase, document the terms in a purchase option using the Option Contract for the Purchase of an Interest in Real Property (form FS-5400-0036). For cases where the landowner is willing to sell over multiple years and the market value exceeds the amount of the current appropriation, use the Option Contract for the Purchase of an Interest in Real Property - Phased Purchase (form FS-5400-0042). The option becomes a binding contract on both parties when exercised by the Authorized Officer. No officer of the Federal Government has authority to terminate, amend, or revise the option, except in the interest of the United States or as expressly provided in the option. Consequently, it is essential that both parties fully

understand all the conditions and terms of the transaction, and that these terms and conditions are accurate and unambiguous.

15.32 - Delivery of Option to the Landowner

Submit two copies of the option with a transmittal letter to the landowner that explains the actions required by the landowner. The landowner will return one signed copy of the option to the Authorized Officer. Obtain evidence of authority of individuals to sign in representative capacities. Such evidence often takes one of the following forms:

1. Attorneys-in-Fact. Original or certified copy of power of attorney executed by each person in interest.
2. Administrator. Certified copy of appointment and of court order authorizing sale.
3. Executor. Certified copy of appointment and will. Where necessary, court order authorizing the sale.
4. Guardian. Copy of appointment and court order authorizing sale.
5. Commissioner or Other Officer of a Court. Copy of court order of appointment and authorization to sell.
6. Corporate Officer. Corporate seal and attestation by the Secretary of corporation, if required. Also, a copy of the corporate charter or bylaws allowing the corporation to hold and transfer real property with designation of the proper corporate officer(s) who can sign for transferring real property, and the minutes of stockholders' or directors' meeting certified to by the corporate Secretary authorizing sale and conveyance of the property by the Designated Corporate Officer(s) (often called a resolution to convey).
7. County Clerks or Commissioner. Copy of the resolution or minutes of meeting by the County Commissioners authorizing disposal of the property by the proper county official.
8. Trustee. Copy of document creating the trust and appointing the Trustee that verify the authority of the Trustee to complete real estate transactions.

A landowner shall sign the option in the same form, spelling, and preferably in the same order as the name(s) appear in the first sentence of the option. The landowner shall sign and date the original and all additional copies. An option executed by married persons must be signed by both spouses, unless the property is individually owned and the signature of the spouse is not required under State law. If the spouse's signature is not required under State law, document this in the transmittal letter. Have each signature witnessed or notarized in a manner consistent with State law.

The option requires the payment of one dollar, the maximum allowed by law (Act of August 3, 1956; 7 U.S.C. 2268a). In the case of several owners, as in an estate, the dollar must be paid to the individual with power of attorney. If the owners have not designated an attorney-in-fact, the estate representative decides who will receive the payment.

15.33 - Option Modification

If a condition is found that has not been specifically covered in the option, either correct the condition or modify the option. Modifications to the option can be made only when it is in the interest of the United States, and with the written consent of both parties.

The landowner and Authorized Officer shall initial corrections or changes that do not require a new option. If major changes are made after the landowner has signed the option, have a new form executed. OGC shall approve any modification to the standard form, such as new clauses, deletions, and attachments. The following conditions may require modification of the option:

1. Acreage shortage or excess. With a per acre option, the authorization to purchase a property of given acreage carries with it the authority to purchase a different acreage if so determined by a survey. A per acre option must not be accepted until after the survey is completed and the correct acreage determined. Whenever the acreage shown in the Legal Description Verification differs from the acreage in the appraisal review report, the assigned review appraiser shall document any change in overall value. If a value changes, determine if adequate funds are still available. A lump sum option must not be changed based on acreage shortage or excess.
2. Modification of payment due to damages. The option provides that the vendor agrees not to perform, or permit others to perform, any act that diminishes or encumbers the value of or title to the property. In addition, the landowner shall bear any loss or damage to the property resulting from the unauthorized cutting or removal of products, the removal of minerals or other natural resources, fire, or acts of God, that occur before the vesting of satisfactory title in the United States.

In the event that such loss or damage occurs, the United States may refuse, without liability, to accept conveyance of the property. However, the United States may elect to accept conveyance, if an equitable adjustment is made in the purchase price.

Investigate and appraise the damage using the same methods as in a trespass case (FSM 5330). After completing the investigation, the Forest Supervisor submits a report to the Regional Forester describing the nature, time, and extent of damage. Based on the Forest Supervisor's report, the review appraiser will determine if the changed conditions will require further action. The Regional Forester determines responsibility for the damage. If an optioned property suffers a loss in value, the Regional Forester shall carefully review the situation and may terminate the option.

15.34 - Option Expiration

If the option is due to expire before execution by an Authorized Officer, and acquisition of the property is still desirable, seek an extension of time from the landowner. Consult with the assigned review appraiser about potential changes in the market prior to seeking an option extension. Provide written evidence of the extension.

15.35 - Option Cancellation

An option may be cancelled before acceptance by the Agency. When the landowner requests cancellation of an option, the Regional Forester shall document the circumstances, facts, and recommend action to the Washington Office for a final decision (FSM 5404.14). Notify the landowner of this decision.

15.36 - Option Acceptance

The Authorized Officer may exercise an option once:

1. The landowner has accepted and returned a signed option; and
2. the availability of funds has been confirmed.

The option becomes a binding contract on both parties once exercised by the Authorized Officer. Maintain the original option in the official title file. Send an executed copy to the landowner and inform the landowner of any actions needed to close the acquisition and an estimated timeline for closing.

15.37 - Recording an Option

It may be beneficial to record the option, though recordation may not be authorized in all jurisdictions. This gives legal notice to all possible buyers of the property that it is covered by an agreement with the United States, and that sale of the property is subject to the terms of the agreement. If the option cannot be recorded without an acknowledgment, have the option notarized or request OGC prepare an affidavit acknowledging the option.

15.4 - Displaced Persons and the Uniform Relocation Act

Advise the landowner about relocation benefits specified in the Uniform Relocation Act for situations that involve lawful occupant-tenant situations that may qualify as displaced persons by a Federal action to acquire the property. Relocation assistance is generally not available to owners and their tenants in the case of a willing seller. The Department of Transportation regulations direct all Federal agencies on relocation payments to displaced persons. See 49 CFR 24.

16 - Title and Closing Procedures

16.1 - Title Regulations

As mentioned in section 13.3, DOJ oversees the regulations guiding Federal land acquisition, including standards for determining sufficiency of title. USDA has delegated authority from the DOJ to approve the condition of title for land acquisitions, subject to DOJ oversight. Within USDA, OGC is authorized to review and approve title to real property to be acquired. OGC determines whether the title evidence meets the requirements of DOJ. Regional OGC first issues a preliminary title opinion (PTO) based on initial title evidence (for example, a preliminary title commitment), a CIP, and any additional supporting documentation.

The Agency may not acquire title to real property until OGC has issued a PTO and any unacceptable title conditions found in it are resolved to the reviewing attorney's satisfaction. After the deed is recorded, OGC prepares a final title opinion (FTO), usually based on a final title insurance policy. Obtain a final title policy using the most current ALTA U.S. Policy form (consult with an Agency land law examiner or OGC to determine the current acceptable policy form). See FSH 5409.13, chapter 51, for exceptions to use of this form of title evidence.

16.11 - Deeds

OGC approves deeds conveying title to the United States in accordance with DOJ Title Regulations.

DOJ Title Regulations require a general warranty deed in order to warrant or guarantee against title defects. Obtain an U.S. ALTA or TLTA title policy in the most current format insuring the United States. The DOJ Title Regulations state that the amount of insurance or liability amount chosen is left to the discretion of the acquiring agency, but recommends at least half of the consideration paid for the property.

Under certain circumstances, quitclaim deeds, special warranty deeds, or deeds without warranties may be accepted from public authorities and others when approved by OGC. The policy must not include an exception because of the type of deed.

A Forest Service officer who is familiar with the terms and conditions of the deed shall certify in the margin of the first page of the deed that the description, acreage, consideration, and conditions of the purchase are correct. Some states and counties may have minimum margin requirements. The County Recorder may prevent certification if there is writing or notation anywhere in the margins of the deed. In those cases, the certification can be added at the end of the deed language. Certification for purchase deeds must be completed prior to sending the deed to the landowner for signature. When working with corporations, trusts, and partnerships, be sure to have proper corporate/signatory authority prior to recording the deed.

16.12 - Obligation and Fund Transfer

Following exercise of the option, purchase funds must be obligated as soon as possible. An obligation remains in effect until it is paid, unless the exercised option is terminated. The Washington Office reviews and approves fund transfers to the Regions upon receipt of a LADS case summary document, a LADS budget execution document, and a map in the legislative format (<http://fsweb.wo.fs.fed.us/lands/index-legmap.shtml>). Consult the Albuquerque Service Center for obligation and payment processing requirements.

16.2 - Closing

The Authorized Officer shall ensure that DOJ Title Regulations and all instructions, requirements, and conditions set forth by the United States and the landowner are met prior to closing. The Authorized Officer shall also ensure that water rights ownership transfers, assignments, and beneficial use filings necessary to secure water rights the United States should

acquire are completed as part of the transaction closing procedure. In states where water rights transfers cannot occur at closing, the Authorized Officer shall ensure all necessary information and documentation to secure the rights are received. The United States accepts title to the non-Federal land when the deed is recorded in the county records. In accordance with the Uniform Relocation Act, the Agency shall make every reasonable effort to expedite closing, and to make payment to the seller so as not to create a hardship.

16.21 - Updating the Certificate of Inspection and Possession

A final on-the-ground inspection and inquiry must be made as close in time as feasible to the closing of a purchase and documented by updating the CIP form. The title evidence and physical inspection must show that no adverse claimants are occupying the land, and that no new labor or materials have been used or placed on the lands that might contribute to a lien. The CIP and supplemental forms anticipate that additional information can and often will be added. It is permissible to attach one or more addenda to add to or update the CIP based on Regional standards.

16.22 - Escrow

Escrow agents may be used to facilitate the closing of land purchases. Escrow instructions and agreements may be useful in Agency real estate transactions because they facilitate complex closings and resolution of title encumbrances. OGC shall approve all escrow instructions. On non-complex transactions (for instance, donations or rights-of-way acquisitions), it may be acceptable for experienced realty specialists to conduct over-the-counter closings, without use of an escrow agent.

16.23 - Provisions for Taxes

Because States may vary on when taxes are due, provision must be made at escrow to satisfy the payment of future taxes not yet billed but assessed. Due to State requirements, it may be necessary for the escrow agent to estimate and withhold more than the previous year's tax bill. The Uniform Relocation Act requires reimbursement to the landowner for taxes paid for the period of time after title vests in the United States.

16.24 - Payment

Payment may be made based on either PTO, provided all conditions have been satisfied, or FTO. The Uniform Relocation Act requires that agencies make reasonable effort to acquire real property expeditiously.

16.3 - Post-closing Requirements

After closing but before the FTO, order the final title insurance policy and ensure that all agreed upon changes were made, and update the Certificate of Use and Consent to reflect the final title policy.

16.31 - Request for Final Title Opinion

The DOJ Title Regulations specify that the request for FTO must occur within a reasonable time after closing so that any errors or omissions can be quickly identified and resolved. Generally, FTO should be requested immediately after closing and the Agency receives the final title insurance policy. In no circumstances should it be requested later than one year after closing.

16.32 - Notifying the Bureau of Land Management

Upon receipt of FTO, the Regional Office land status specialist shall inform the appropriate BLM State Office of the case closing and provide the documentation necessary to post the purchase to the public record. The BLM State Office will specify the required documentation.

16.33 - Post-closing

After an acquisition is closed, the realty specialist shall:

1. Update LADS and electronically share maps, documents, and photos with the LSRS data steward for the Region.
2. Update LSRS and any applicable land status books.
3. Inform the county taxing authority of the change of ownership.
4. Inform the boundary management and all applicable National Forest staff (in particular, law enforcements and GIS data stewards) of the purchase.
5. If the transaction includes a transfer of water right and/or water facility (for example, a well), ensure that the documentation necessary to complete the transfer is completed to local standards. In addition, ensure that water rights are put to beneficial use.
6. Update the Forest LRMP or LMP.
7. Review specialist reports to see if there is any recommended action after acquisition to complete.

16.4 - Permanent Title File

At a minimum, the permanent title file must contain the original documentation except where noted that copies or types of other documentation are allowed. The permanent title file should contain no draft documents. The required documents are listed in exhibit 01. See FSM 6230 for additional direction on records management.

Prepare the following labels for the permanent case file:

Right label:

5420 - Purchase and Donations

Left label:

Landowner Name(s) _____ NF

Case Name

16.4 - Exhibit 01

Example of Title File Organization

TITLE DOCKET - Section 1 5420 PURCHASES

CONVEYANCE DOCUMENTS

1. Warranty Deed - original recorded deed at Final Title Opinion (FTO)
2. Warranty Deed - draft deed as approved by Office of General Counsel (OGC) at Preliminary Title Opinion (PTO)
3. Purchase Option and Contract (FS-5400-36)
4. Resolution to Convey and Corporate/Signatory Authority, Power of Attorney, Affidavit of Identification, Disclaimer of Interest, if applicable
5. Appraisal Review and Approval
6. Statement and Summary of Estimated Just Compensation, if applicable
7. Offer Letter to the Landowner

TITLE DOCKET - Section 2 5420 PURCHASES

TITLE OPINIONS, LEGAL DESCRIPTION, MAPS, AND ESCROW

1. LADS Report Form
2. Final Title Opinion (FTO)
3. Preliminary Title Opinion (PTO)
4. Legal Description Verification, with approved Legal Description attached
5. Maps, surveys, and aerial photos
6. Payment Receipt Form and wiring verification - FTO pkg.
7. Escrow Instructions, if applicable - Forest prepares
8. Closing Instructions
9. Case Checklist, if used

16.4 - Exhibit 01--Continued

TITLE DOCKET - Section 3 5420 PURCHASES

TITLE INSURANCE POLICIES - originals
ALTA U.S. Policy - 9/28/91

NOTE: Obtain a title commitment/report before the U.S. takes title using the appropriate ALTA/TLTA form as specified by the DOJ. Also, ensure the final title policy uses the correct form before closing the case file.

1. Preliminary title commitment/report - include in PTO package
2. Title commitment updates and supplemental reports - include in PTO package
3. Final title policy - include in FTO package

TITLE DOCKET - Section 4 5420 PURCHASES

CURATIVE DOCUMENTS (if applicable):

1. Taxes (paid tax receipts)
2. Mortgage releases
3. Judgments
4. Agreements
5. Affidavits of identification
6. Satisfactions, etc.

RECORDED DOCUMENTS FROM:

1. Schedule A documents (legible copies)
 - a. Copy of vesting deed/document
 - b. Descriptions and exceptions on vesting deed
 - c. Copy of patent or summary of patent from BLM if relevant
2. Schedule B documents (legible copies)
 - a. Exceptions, conditions, and encumbrances

16.4 - Exhibit 01--Continued

TITLE DOCKET - Section 5 5420 PURCHASES

ORIGINAL CERTIFICATES and REPORTS

1. DOJ Certificate of Inspection and Possession (FS-5400-28) dated immediately prior to recording of deed
2. Supplemental Certificate of Possession (FS-5400-38) signed and dated on or after deed recorded (used by some Regions to supplement the Certificate of Inspection and Possession)
3. Certificate of Possession (FS-5400-37) (used by some Regions to supplement the Certificate of Inspection and Possession)
 - signed by person who did field exam, include map(s) and photos
4. Certificate of Use and Consent and amendments/updates (FS-5400-29) signed by Forest Supervisor
5. Signed P.L. 91-646 certificate
6. Hazardous Waste Certificate signed by landowner
7. Certificate of Non-Foreign Status signed by landowner
8. All Appropriate Inquiry (AAI) documentation (may be ESA, Phase 1 Hazmat, Phase 2 Hazmat, worksheets 1-5, etc.)
 - Technical review of AAI report by qualified Forest Service environmental professional (EP), if necessary
 - EP summary of AAI report
 - Update(s) of initial AAI report, if necessary
 - Attach AAI report separately unless small enough to include in docket folder
9. Mineral rights information and mineral potential report, if required
10. Water rights information
11. Public interest determination (or decision documentation)

16.4 - Exhibit 01--Continued

TITLE DOCKET - Section 6 5420 PURCHASES

CORRESPONDENCE - put everything in chronological order with most recent at top. Reduce all documents to 8.5" x 11" if it will not destroy the integrity of the document.

INCLUDE:

1. Final closing letters to Regional Office, Forest Supervisor, and BLM
2. LADS, LSRS, and ALP Information Sheet
3. Financial and closing documents from escrow and Title Company
4. External and internal letters
5. County Congressional notifications
6. Request for Appraisal Services
7. Any other miscellaneous correspondence relevant to the case