

**Forest Service Manual  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Manual 5409.13 – Land Acquisition Handbook**

**Chapter 20 – Donations**

**Amendment:** 5409.13-2020-1

**Effective date:** August 25, 2020

**Duration:** This amendment is effective until superseded or removed.

**Superseded Directive:** 5409.13\_20, Amendment 5409.13-91-1, 09/03/1991;  
5409.13\_10, Amendment 5409.19-1

**Approved by:** Tina Terrell, Associate Deputy Chief, NFS

**Date approved:** August 9, 2020

**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 5409.13-2018-1 to FSM 5409.13\_10.

**20:** Revises chapter in its entirety to align with industry practices/standards and current law.

## Table of Contents

20.1 – Authority.....	4
20.2 – Objective.....	5
20.3 – Policy .....	5
20.4 – Responsibility .....	5
20.5 – Definitions.....	5
21 – General Guidance for Land Donations .....	5
21.1 – Initiation of Donations .....	6
21.2 – National Environmental Policy Act.....	6
21.3 – Landownership Adjustment Plan Considerations .....	6
21.4 - USDA Gift Acceptance Policy .....	6
22 – Development of a Donation Case .....	7
22.1 – Donation Proposal.....	7
22.11 – Evaluation of the Proposal .....	7
22.12 – Acceptance or Rejection of a Donation Proposal.....	8
22.2 – Working with a Conservation Partner (Facilitated Donations) .....	9
22.3 – Reservations and Outstanding Rights.....	10
22.4 – Acquisition of Improvements.....	10
23 –Processing Donation Cases .....	10
23.1 – Preliminary Title Commitment.....	10
23.2 – Forest Supervisor Report and Reviews .....	11
23.21 – Boundary Management Review .....	11
23.22 – Mineral Report.....	11
23.23 – Water Rights Analysis.....	12
23.24 – Access to Donation Property .....	13
23.25 – Executive Order 11990 (Wetlands) and Executive Order 11988 (Floodplains) ....	13
23.3 – Certificate of Inspection and Possession .....	14
23.31 – Property Inspection, Use and Occupancy .....	14
23.32 – Certificate of Use and Consent .....	15
23.4 – All Appropriate Inquiries.....	15
23.5 – Notification to County and Congressional Delegations .....	15
23.6 – NEPA Compliance .....	15
23.7 – Landownership Adjustment Data System (LADS).....	15
24 –Acquisition Oversight .....	16
24.1 – Administrative Sites .....	16
24.2 – Acceptance of Donations .....	16
25 –Title and Closing Procedures .....	17
25.1 – Deeds.....	17
25.2 – Closing .....	17
25.21 – Updating the Certificate of Inspection and Possession .....	17
25.22 – Escrow .....	18
25.23 – Provision for Taxes.....	18

25.24 – Tax Implications for Donors.....	18
25.25 – Conditional Gifts .....	18
25.3 – Post-Closing Requirements .....	19
25.31 – Request for Final Title Opinion .....	19
25.32 – Notifying the Bureau of Land Management (BLM) .....	19
25.33 – Post-Closing .....	19
25.4 – Permanent Title File .....	20

## 20.1 – Authority

General and specific system or management area land donation authorities with Service-wide application are found in FSM 5420.13. Laws, regulations, and executive orders affecting land acquisitions, including donations, are found in FSM 5420.14 and FSM 5470. Authorities of specific importance to this handbook include:

Clarke-McNary Act (16 U.S.C. 569). This law permits acceptance of donated lands subject to reservation of merchantable timber or mineral or other rights for a period not exceeding 20 years. Section 7 allows acceptance of qualifying lands for timber supply or other National Forest purposes outside of the forest boundary or a purchase unit. There is no obligation to establish a new purchase unit, but if established, those shall be in units of such size or so located as to be capable of economical administration as National Forests either separately or jointly with other lands acquired under this section, or jointly with an existing National Forest, and the lands acquired shall have Weeks Act designation. See Act of March 1, 1911 (Weeks Act). Approval of the Washington Office Director of Lands is needed. See FSM 5404.14(8).

Act of March 3, 1925 (16 U.S.C. 555). This law permits acquisition of sites for National Forest administrative facilities by purchase or donation subject to such reservations or outstanding rights as the Secretary of Agriculture determines would not interfere with the purpose of the Act. The purpose of this Act is to provide sites needed for the effective conduct of authorized activities of the Forest Service.

Wilderness Act of 1964 (16 U.S.C. 1135). Section 6(a) states that USDA may accept gifts or devises of land adjacent to wilderness, but outside the wilderness boundary, and that land shall become part of the wilderness upon acceptance by USDA and without action by Congress regarding the wilderness boundary. It does require notice to the Speaker of the House of Representatives and the President of the Senate 60 days in advance of accepting the donation.

Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (43 U.S.C. 1715, 1716). This law amends all exchange authorities and authorizes the Secretary to accept title to any non-Federal land or interest therein determined to be in the public interest.

Gift of Property Act of October 10, 1978 (7 U.S.C. 2269). The Secretary of Agriculture is authorized to accept, receive, hold, utilize, and administer on behalf of the United States gifts, bequests, or devises of real and personal property made for the benefit of the United States Department of Agriculture (USDA) or for the carrying out of any of its functions.

USDA Gift Acceptance Policy (DR-5200-003). This Departmental Regulation establishes the United States Department of Agriculture (USDA) policy for the acceptance and solicitation of gifts of personal, real, and intellectual property and is found at: [https://www.ocio.usda.gov/sites/default/files/docs/2012/DR%205200-003\\_Gift%20Acceptance%20Policy\\_0.pdf](https://www.ocio.usda.gov/sites/default/files/docs/2012/DR%205200-003_Gift%20Acceptance%20Policy_0.pdf).

Department of Justice Title Regulations. The Office of the General Counsel (OGC) is required to approve title for all donations, pursuant to the Department of Justice (DOJ) regulations found at: <https://www.justice.gov/enrd/page/file/922431/download>.

## **20.2 – Objective**

See FSM 5402 and FSM 5420.2.

## **20.3 – Policy**

See FSM 5403.1 and FSM 5420.3.

## **20.4 – Responsibility**

See FSM 5404 and FSM 5420.4.

## **20.5 – Definitions**

See FSH 5409.13, chapter 10.

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

Donation. Acquisition of real property, land, or any interest in land without payment of any amount of compensation or consideration for the value of the land or a portion thereof.

## **21 – General Guidance for Land Donations**

Most land donations for National Forest System (NFS) purposes are discretionary and voluntary real estate transactions between the United States and a non-Federal landowner. Consider a donation only if it is in the public interest and consistent with the criteria for a land acquisition proposal found in FSM 5421.34 and the applicable National Forest/Grassland Land Management Plan (LMP) or Land and Resource Management Plan (LRMP). Identify potential concerns or issues associated with the estate in real property early in the process (for example, split estates, structures, access, hazardous substances, and mineral or water rights). Specific issues may include how water rights will be put to beneficial use, how specific resources will be protected, and how outstanding rights will be addressed.

The Regional Forester or delegated authorized Line Officer evaluates the suitability of the proposed donation for National Forest purposes; assesses the feasibility of economic and effective administration; judges the potential for controversy; estimates the relative significance of the offered land; and evaluates the nature of any reservations, encumbrances, or outstanding rights and their effect on administration. The Regional Forester or delegated authorized Line Officer will also determine whether approval by OGC of limitations on title is necessary, pursuant to DOJ regulations found in the publication “Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions” (DOJ Title Regulations).

## **21.1 – Initiation of Donations**

Donation proposals may be developed during an initial contact about a possible purchase or exchange, or they may arise as unsolicited offers to gift real property to the United States of America.

## **21.2 – National Environmental Policy Act**

Support proposed donations by following the National Environmental Policy Act (NEPA) objectives. Follow the guidelines in FSM 1950 and at 36 CFR 220.6.

## **21.3 – Landownership Adjustment 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 shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and LRMPs/LMPs applicable to such area.

## **21.4 - USDA Gift Acceptance Policy**

Donations of real property to the Forest Service do not require approval by the USDA Assistant Secretary for Administration, since there are processes in place that allow real property donations to be exempted (DR-5200-003(5)(e)(1)). The Agency shall follow the requirements found at DR-5200-003(5)(e)(3), but the Forest Service is not subject to reporting requirements found in section 11: “[g]ifts of real property to the Forest Service (FS) or the Natural Resources Conservation Service (NRCS), for or in connection with natural resource programs, shall be accepted in accordance with procedures established in the FS Manual or the NRCS General Manual, respectively, subject to the requirements of Sections 6, 7, 8 and 9[.]” which specifically excludes section 11.

However, the Forest Service is subject to the requirements regarding prohibited sources, solicitation of gifts, and prudential considerations to ensure impartiality found at DR-5200-003(5)(e)(3)(6-8). A gift of real property may be accepted from a prohibited source if it is found to be in the public interest because the benefits relating to the acceptance of the gift substantially outweigh the appearance of loss of impartiality on the part of USDA in its dealings with the donor. However, such gifts can be accepted only by the Secretary and the Deputy Secretary, or any general officer, Under Secretary, Assistant Secretary, or Agency head with respect to a gift to their mission area or staff office, after consultation with OGC.

The definition of prohibited source at 5 CFR 2635.203(d) excludes from its coverage organizations for who a majority of members are not regulated by the Federal Government nor doing business with it. However, under DR-5200-003, a group to which the Forest Service has issued special use permits or is composed largely of special use permittees is a prohibited source, as is any group with litigation against the USDA. Under these circumstances, an option may be

for a prohibited source to donate the property to a third party that is not a prohibited source, and allow the third party to donate to the USDA. For example, the National Forest Foundation may be able to accept a donation from a prohibited source based on 5 CFR 2635, then donate to the Forest Service.

## **22 – Development of a Donation Case**

A potential land donation may be initiated by the landowner, their authorized representative, a non-profit partner, or conservation organization.

### **22.1 – Donation Proposal**

If a landowner or conservation partner wants to make a donation of real property or an interest in real property, request that they summarize the conditions of the offer in a letter to the Forest Supervisor or Regional Forester. The letter should include:

1. The donor's name, address, marital status, name of all owners in the real estate interest, and their spouse's name, if applicable.
2. The county and State name, a legal description, and an approximate acreage of the tract.
3. Known outstanding rights.
4. Reservations, if any, to be made by the donor.
5. Known title defects, mortgage, tax assessments, and other liens, as well as the donor's timeline for remedying the defects. It is the donor's responsibility to fix any known title defects, liens, or mortgages prior to the donation.

Carefully define the real property description and rights included in donation offers, particularly those involving partial interests, to avoid misunderstandings later. If the contact is a legal representative or conservation partner (see sec. 22.2), the representative or conservation partner must provide a written description of its legal relationship with the landowner.

### **22.11 – Evaluation of the Proposal**

The preliminary site evaluation is non-disturbing to the land and often conducted from documentation available in existing records and databases. Examine donations sufficiently to determine if the property is suitable for inclusion in the National Forest System, as well as for any possible outstanding rights or adverse claims. If a categorical exclusion will be used for NEPA purposes (see 36 CFR 220.6), then make the necessary reviews so that the authorized Line Officer can determine whether there are any extraordinary circumstances to preclude its use. See the optional donation checklist in the Land Adjustment Database System (LADS) SharePoint site.

An appraisal is not required to establish the value of the donation for the purpose of acceptance under the USDA gift acceptance regulation (DR-5200-003(5)(e) and (6)(c)(2)(a)). The Forest Service does not provide any information to the donor regarding valuation for tax purposes and staff appraisers shall not conduct valuation services for donations of real property or interests therein. Staff appraisers are “excluded individuals” for Internal Revenue Service (IRS) purposes as defined by IRS Publication 561, “Determining the Value of Donated Property” (<http://www.irs.gov/pub/irs-pdf/p561.pdf>).

## **22.12 – Acceptance or Rejection of a Donation Proposal**

Based on the information discovered from evaluation of a proposed donation property, the Regional Forester or authorized Line Officer has the delegated authority to accept or reject the proposal (see FSM 5404.21). If the proposal is rejected, advise the landowner in writing of the rationale.

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

1. Permission. Secure written permission from the landowner for the Agency and its agents/contractors to enter onto the property under consideration. Written permission to access the property is necessary for site inspections, environmental site assessments, and resource surveys needed to determine acceptance or rejection of the property.
2. Legal Documents. Obtain a preliminary title report, including a copy of the vesting deed, and all documents listed in the title report. A Forest Service cadastral surveyor will 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 from a public road to the subject property and any other appurtenant right(s) attached to the property not already provided in the preliminary title report. 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). See section 23.24 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 and should be included in the case file.



4. Land Occupancy or Tenants. Inquire about the status of occupancy, but note that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Relocation Act) does not apply to donations. See FSM 5420.14b.
5. Potential Contamination. Complete an environmental site assessment utilizing the All Appropriate Inquiry process. See FSM 2166.4 for more information regarding liability for contamination.

## **22.2 – Working with a Conservation Partner (Facilitated Donations)**

Although they are not agents of the United States, conservation partners can work with Congress, private landowners, and non-governmental organizations to facilitate donation of key parcels. In many cases, a conservation partner will pay for due diligence required to determine whether to accept a donation. They may have the ability to work with a landowners who are unwilling to work directly with the Agency.

When working with a conservation partner, identify the Agency's acquisition priorities. Express the Agency's expectations regarding the Federal review 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. Agency staff shall ensure Agency goals and objectives are or can be met with acceptance of the donated property. A conservation partner should never be encouraged by Agency staff to purchase a property outright, nor can the Agency commit to accept a donation property until the Agency and DOJ can accept title. A conservation partner may choose to acquire a property 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 review is not complete and a property must be donated quickly.
2. Timely expertise and assistance is needed to conduct curative title work, perform an environmental site assessment, and mitigation.
3. The landowner is unwilling to donate directly to the United States.
4. The proposed donor is a prohibited source. See DR-5200-003.

The conservation partner must disclose its legal relationship with the landowner to the Agency in writing. This disclosure is subject to Agency approval. While the Agency typically does not review the actual terms of the contract between the conservation partner and the landowner, the conservation partner will be required to disclose the arrangements upon request.

## **22.3 – Reservations and Outstanding Rights**

Consider proposals subject to reservations or outstanding rights only if administratively acceptable and clearly in the public interest. The OGC must approve limitations of title reservations, and outstanding rights on the offered land or interest in land, per the DOJ Title Regulations. The potential effects of reservations or outstanding rights on the Agency's use of or purpose for acquiring the donated 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 251.17-19). See FSM 5470 for more specific guidance.

A determination that the title under review will allow use of the real property for the purpose intended by the acquiring agency is also mandated by 40 U.S.C. 3111(a). Reviewing attorneys must compare the title evidence with the requirements of the project for which a property is needed. Conflicts may arise, for example, from limitations imposed by restrictive covenants or by rights associated with outstanding mineral interests. Subpart 6.2.1 of the DOJ Title Regulations provides guidance regarding restrictive covenants; subpart 2.2.1 addresses mineral rights. No outstanding rights may be approved that could foreseeably prevent the acquiring Agency's intended land use.

## **22.4 – Acquisition of Improvements**

Occasionally, a property proposed for donation 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 accepting a donation with an improvement, the Agency must assess the purpose for which it is acquiring the improvement, and whether such acquisition conforms to the Forest or Grassland LMP/LRMP and/or Facilities Master Plan. Acquiring property encumbered by an improvement requires additional coordination between the Lands, Environmental Engineering, Heritage, Facilities, and Acquisition Management (AQM) staffs with respect to the ultimate retention or disposal of the structure. See FSM 5470 and FSH 5409.13, chapter 10, for more specific guidance on acquisition of improvements.

## **23 –Processing Donation Cases**

### **23.1 – Preliminary Title Commitment**

The DOJ Title Regulations direct acquiring agencies to obtain a preliminary title commitment or equivalent record title evidence from a competent title insurance company or other qualified source. 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 holds membership with the American Land Title Association (ALTA) or Texas Land Title Association (TLTA). Some

States do not have title insurance, so utilize an attorney or qualified professional to provide title information.

A preliminary title commitment should be obtained immediately after the Regional Forester, or authorized Line Officer, has decided to proceed with a donation proposal. See FSH 5409.13, section 13.1 for more specific guidance. 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.

## **23.2 – Forest Supervisor Report and Reviews**

The Forest Supervisor's report is the official decision to move forward with the donation. However, subsequent analyses or discoveries during inspections may disqualify the donation. The Forest Supervisor report may be a stand-alone document, or may be in the form of a categorical exclusion review or environmental assessment. The report must:

1. Address the public benefits and justification for accepting the donation.
2. Describe the proposed use of the tract.
3. Identify the authority for acceptance (FSM 5420.13).
4. Include a map of appropriate scale showing the relationship of the offered tract to other NFS lands.

Depending on the case, various reviews and reports may be needed, including boundary management, mineral potential for development, water rights, and access. Also, compliance with NEPA requires resource reviews. Work with an Agency environmental coordinator to determine the appropriate level of review. Upon completion of all environmental analyses and appropriate documentation, and all other supporting studies and requirements to determine if the donation is in the public interest and in compliance with applicable law and regulations, the Forest Supervisor shall decide whether to move forward with the donation.

### **23.21 – Boundary Management Review**

Property to be acquired must be legally described before it is conveyed. Request a 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.

### **23.22 – Mineral Report**

When the estate to be donated does not include the mineral estate, the landowner shall make every effort to obtain the outstanding interests. If unsuccessful, a mineral report must be

prepared which evaluates the nature and extent of all minerals, oil and gas, sand and gravel, and geothermal resources, as well as the probability of development. The Regional Forester or authorized Line 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 5470 for guidance on acquiring properties with outstanding rights, such as mineral reservations. A donation may be accepted where minerals are reserved for not more than 20 years.

Acquisition of sites for Forest headquarters, Ranger stations, and dwellings by donation subject to outstanding interests are allowed if the Secretary of Agriculture, or delegated Line Officer, determines it would not interfere with the purpose of the acquisition. FSM 5470.11a (5). Follow DOJ Title Regulations for mineral interests, which detail report requirements, allow agency personnel to prepare reports with OGC approval, and require a determination of noninterference when the Agency acquires land without all mineral rights.

### **23.23 – Water Rights Analysis**

Complete a water rights analysis that identifies ground and surface water rights, including any ditches and structures, associated with the property considered for acquisition. Request a water rights report from the State engineer and 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 donated.
2. Report intended beneficial use by the United States of the water to be donated.
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 and 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 Valuation Services package.

## **23.24 – Access to Donation Property**

Four components of access should be reviewed when considering a property for donation:

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 components can have an effect on the ability of the public to get to 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.

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.

Evaluate outstanding access rights of record to determine consistency with future management, and the impact of previously developed access and potential impact of possible future routes. Identify each road or trail on the property that is not recorded and assess whether there is 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, and document this on the Certificate of Inspection and Possession (form FS-5400-28) and the Certificate of Use and Consent (form FS-5400-27).

## **23.25 – Executive Order 11990 (Wetlands) and Executive Order 11988 (Floodplains)**

These Executive Orders address water-related areas of environmental concern. The intent of Executive Order 11990 is to help avoid the long-term and short-term adverse effects associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in the wetlands whenever there is a practicable alternative. The intent of Executive Order 11988 is to help avoid the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of flood development whenever there is a practicable alternative (FSM 2500). Because a donation entails the acquisition of land, the Agency will document the acreage of wetlands and floodplain to be acquired based on a review of available information in existing records and databases. FSM 2527 provides Agency implementing direction to identify the general location of floodplains and wetlands on NFS lands during the land and resource management planning process.

### **23.3 – 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 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.

#### **23.31 – 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.

### **23.32 – 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.

### **23.4 – 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. See FSH 5409.13, section 13.4, for more specific guidance.

### **23.5 – Notification to County and Congressional Delegations**

Notify the county and, if required for the donation, 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. Notification of the proposed land acquisition should also include federally recognized Native American tribes per a consultation policy agreement. See FSH 5409.13, section 13.5, for more specific guidance.

### **23.6 – NEPA Compliance**

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

### **23.7 – Landownership Adjustment Data System (LADS)**

The 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 donation must be reported in the fiscal year in which the documents of purchase by the United States are recorded.

## **24 –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.

### **24.1 – Administrative Sites**

Approval of the Assistant Secretary for Administration is not required for gifts of real property to the Forest Service for or in connection with natural resource programs, and those gifts must be accepted in accordance with procedures established in FSM 5404, pursuant to DR-5200-003(5)(e)(3).

### **24.2 – Acceptance of Donations**

The Regional Forester or authorized Line Officer will only accept donations of lands or interests in lands when they meet the criteria set out in FSM 5403.1. Donations in the following categories must have prior review and concurrence by the Washington Office, Director of Lands and may also require review and approval by OGC:

1. The donation may result in adverse public reaction or controversy.
2. The donation is outside the boundaries of a National Forest, National Grassland, or purchase unit, or is an isolated tract within an existing unit not planned for acquisition in an approved land management plan.
3. The donation is subject to outstanding rights or reservations that could preclude public use of the property for a period of time, affect management of adjoining public lands, or result in future activities limiting public use.
4. Acceptance of the donation could be construed as obligating the United States to expend funds in excess of the usual protection and management appropriation, such as properties requiring special expenditures to ensure public safety or to meet appropriate public health or environmental standards.
5. Offers to donate rights or interests in land are not identified for acquisition in approved LRMPs/LMPs and the United States does not own existing interests in the property, such as easements in gross.

If Washington Office oversight is required, the Region must submit an email request to the Washington Office, Lands and Realty Management Staff with the following information:



1. Copy of landowner's offer;
2. LADS summary;
3. Legislative map(s) that clearly identify the non-Federal land to be acquired, legend and name of case (<http://fsweb.wo.fs.fed.us/lands/index-legmap.shtml>);
4. Forest Supervisor report;
5. Environmental site assessment; and
6. Mineral or water rights reports, if any.

DOJ oversees the regulations guiding Federal land acquisition, including standards for determining sufficiency of title. USDA has delegated authority from 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, which may include a preliminary title commitment or report, 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).

## **25 –Title and Closing Procedures**

### **25.1 – Deeds**

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

### **25.2 – 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 will 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.

#### **25.21 – 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 donation 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 anticipates 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.

#### **25.22 – Escrow**

Escrow agents may be used to facilitate the closing of a land donation. Escrow instructions and agreements may be useful in agency real estate transactions because they facilitate complex closings and resolution of title encumbrances. OGC must approve all escrow instructions. On non-complex transactions, it may be acceptable for experienced realty specialists to conduct over-the-counter closings, without use of an escrow agent.

#### **25.23 – Provision for Taxes**

Whereas 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.

#### **25.24 – Tax Implications for Donors**

A major motivation for making a donation of land to the United States is that the donor may take a charitable tax deduction equal to the market value of the property as of the date of the donation.

It is the responsibility of the donor to properly report donations for purposes of a charitable deduction. The Internal Revenue Service has published regulations pertaining to deductions for donations of land (51 Fed. Reg. 1496, Jan. 14, 1986). It is the donor's responsibility to have the land appraised for purposes of determining the value of the deduction. If the tax deductibility of a possible donation is in question, the potential donor should be advised to consult with an independent accountant or tax attorney, or to seek an opinion from the Internal Revenue Service.

#### **25.25 – Conditional Gifts**

The Act of October 10, 1978 (7 U.S.C. 2269) allows the Secretary of Agriculture to accept real or personal property gifts for the benefit of the USDA or for carrying out any of its functions. This broad authority to accept gifts covers any lands or interests in lands which might benefit National Forest purposes or management.

Conditional gifts are not to be encouraged, but may be acceptable. Conditions to gifts must be closely examined for their management and fiscal implications, precedential nature, and other aspects. A condition to a gift will be specifically set forth in any title documentation and must be approved by OGC and the Forest Supervisor prior to acceptance. See DOJ Title Regulations 3.7.1 and 6.2; FSM 5470.4.

## **25.3 – 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.

### **25.31 – 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.

### **25.32 – Notifying the Bureau of Land Management (BLM)**

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 donation to the public record. The BLM State Office will specify the required documentation.

### **25.33 – 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 donation.
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.
8. Send a letter of thanks signed by the Regional Forester, or authorized Line Officer, to the donor(s). When appropriate, the Chief or the Secretary of Agriculture may sign the letter to the donor.

The Regional Forester, or authorized Line Officer, ensures that lands staff completes the title file and updates the status records. The Forest Service must formally accept the donation (meaning the deed is signed and recorded) before spending any funds to manage and protect the property.

#### **25.4 – 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.

Prepare the following labels for the permanent case file:

Right label:

5420 - Purchase and Donations
-------------------------------

Left label:

Landowner Name(s) _____ NF
----------------------------

Case Name
-----------

## **25.4 - 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. Resolution to Convey and Corporate/Signatory Authority, Power of Attorney, Affidavit of Identification, Disclaimer of Interest, if applicable
4. Appraisal Review and Approval
5. Statement and Summary of Estimated Just Compensation, if applicable
6. 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. FTO package
7. Escrow Instructions, if applicable - Forest prepares
8. Closing Instructions
9. Case Checklist, if used

## **25.4 - 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

## **25.4 - 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)

## **25.4 - 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