

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

**Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook
Chapter 20 – Sales**

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Superseded Directive: 5509.11-2013-1, 22, 23 and 26 (Amendment 5509.11-2013-1, 04/17/2013); 5509.11,20 Contents (Amendment 5509.11-92-4, 08/03/1992); 5509.11,21-21.84 (Amendment 5509.11-92-4, 08/03/1992); 5509.11,21.85-21.9 (Amendment 5509.11-92-4, 08/03/1992); 5509.11,21.9 Ex.01 (Amendment 5509.11-92-4, 08/03/1992); 5509.11,22-25 (Amendment 5509.11-92-4, 08/03/1992)

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Date approved: November 12, 2021

Responsible Staff:

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

21: Updates directives to reflect current law and direction, including changes to the Small Tracts Act and to the Department of Justice’s *Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016)* (DOJ Title Regulations).

21.1: Revises section to update direction on land subject to small tract conveyances.

21.12: Updates direction to reflect general procedures for accepting applications and processing discretionary conveyances of certain mineral survey fractions under public sale procedures.

21.12a: Updates direction on encroachments.

21.12d: Establishes code, caption and provides direction on “Conveyance of Parcels 40 acres or less.”

21.32a - 21.32b: Removes exhibit and provides direction to consult an experienced Realty Specialist for guidance on preparing conveyance agreements and public sale transactions.

21.4: Updates direction with a link to the Department of Justice (DOJ) for guidance regarding title approval for acquisition of lands to be acquired by the United States.

21.42: Provides link to DOJ's website for direction on the title standards promulgated by the Department of Justice in "Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions" (DOJ Title Regulations).

26.01: Updates authority for the Forest Service Facilities Realignment and Enhancement Act.

26.7: Removes exhibits. All exhibits will be placed in LADS.

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21 - Small Tracts Act Adjustment

21.01 - Authority

The Secretary of Agriculture has the authority to resolve certain land ownership disputes associated with encroachments and land management problems pursuant to Public Law 97-465 by conveying, through sale, exchange or interchange.

1. Small Tracts Act of January 12, 1983 (96 Stat. 2535; 16 U.S.C. 521c-i) as amended by Title VIII, Subtitle F, Part II, Section 8621 of the Agriculture Improvement Act of 2018 (Pub. L. 115-334). This Act provides the Secretary of Agriculture with discretionary authority to sell, exchange, or interchange by quitclaim deed all the United States' right, title, and interest, including the mineral estate, in and to certain limited categories of National Forest System lands.
2. National Forest Townsite Act of July 31, 1958 (72 Stat. 483; 7 U.S.C. 1012a; 16 U.S.C. 478a) as amended by Section 213 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2760). This Act authorizes the Secretary of Agriculture to set aside and designate National Forest System land for townsite purposes. Areas so designated may be sold to any qualifying county, city, or other governmental subdivision.
3. Weeks Act of March 1, 1911, as amended (36 Stat. 962; 16 U.S.C. 519). Under section 10 of this Act, certain valuable agriculture lands, inadvertently or of necessity acquired along with Weeks Act purchases and not needed for public purposes, may be sold to actual settlers.
4. Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (50 Stat. 525; 75 Stat. 318; 7 U.S.C. 1011). Section 32(c) and 32(d) of this Act authorizes the Secretary of Agriculture to sell, exchange, lease, or otherwise dispose of such property to public authorities and agencies under such terms and conditions as the Secretary deems would accomplish the purposes of the Act.
5. Federal Property and Administrative Services Act of June 30, 1949 (63 Stat. 378; 40 U.S.C. 471), as amended. This Act authorizes the sale of property that is surplus to the needs of the United States. However, the Act does not apply to lands reserved or dedicated for National Forest purposes.
6. Forest Service Omnibus Act of June 20, 1958 (72 Stat. 217; 16 U.S.C. 565b). Section 5 of this Act authorizes the Secretary of Agriculture to transfer to States and political subdivisions or agencies fire lookout towers and other structures or improvements as well as the land upon which they are located, if such land is outside National Forest boundaries.
7. Forest Service Facilities Realignment Act of 2005 (119 Stat 559-563; 16 U.S.C. 580d, as amended). This Act provides for sale lease or exchange of administrative lands and facilities which are excess to the needs of the Forest Service. The proceeds must be retained for the acquisition, improvement, maintenance, reconstruction, or construction of

a facility or improvement for the National Forest System. (See 36 Code of Federal Regulations (CFR) 254, subpart C)

21.02 - Objectives

(See FSM 5502)

21.03 - Policy

1. Use FSM 5503 for standards and procedures to make prerequisite public interest determinations and carry out an effective and efficient program for resolving title claims and conveying qualified unmanageable tracts in response to applications or under initiated sales procedures. This authority applies to the eleven Western States.
2. Use applicable Small Tracts Act (STA) sale, exchange, or interchange authority to negotiate settlement of innocent encroachment-type title claim cases or the equitable distribution of mineral survey fractions and certain road rights-of-way among or with abutting landowners. For this purpose, the documented negotiations are deemed to be the same as an application under the STA.
3. Apply the public interest criteria, 36 CFR 254.36, to determine if negotiated sale, exchange, or interchange should be made with the occupants of mineral survey fractions who do not qualify as applicants (sec. 21.81a).
4. Provide an opportunity for other agencies' input when making the public interest determination relative to conveying United States title, rights, or interest in National Forest System lands withdrawn for other agency purposes.

See FSM 5503 for additional information regarding policy.

21.04 - Responsibility

See FSM 5504.

Regional Foresters shall approve and execute all documents for disposition of lands over 10 acres in size under the Small Tracts Act of January 12, 1983, and its amendments. This responsibility cannot be delegated without approval of the Washington Office Director of Lands.

21.05 - Definitions

Applicant. A person (see definition of "person" infra, sec. 21.05) who: occupies or has improvements that encroach on National Forest System land under claim of title or color of title; owns land abutting or underlying a road right-of-way; owns land interspersed with or adjacent to mineral survey fractions; seeks a conveyance of National Forest System lands that are physically isolated, inaccessible, or no longer possess National Forest character; or seeks a conveyance of National Forest System lands that are used as

a landfill, sewage treatment plant, or a cemetery currently authorized to operate on National Forest System lands.

Approximately equal value. A comparative estimate of value of lands, which have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

Authorized Officer. A Forest Service Director or Line/Staff Officer who has been delegated the authority and responsibility to make decisions related to selling, exchanging, and/or interchanging all rights, titles, and interests on National Forest System lands.

Claim of title. A claim of land as a person's own, based on any reasonable evidence which establishes the person had full title thereto from the time the person obtained ownership of abutting land (also known as title claim).

Color of title. Arises from an instrument or writing purporting to convey title or interest in title to a tract of land.

Encroach. To enter by gradual steps or to intrude upon the lands, property, or authority of another.

Encroachments. Improvements occupied or used on National Forest System land under claim of title or color of title.

Exchange. A discretionary, voluntary transaction involving mutual transfers of land or interests in land between the Secretary of Agriculture acting by and through the Forest Service and a non-Federal entity.

Improvements. An addition to property costing labor or capital which affects its value. The term generally includes fixtures, structures and attendant facilities, or buildings.

Interchange. A land transfer in which the Secretary and another person exchange lands or interests in lands of approximately equal value without a formal appraisal.

Mineral survey fractions. Small parcels of National Forest System lands interspersed with or adjacent to lands transferred out of Federal ownership under the mining laws.

Occupancy. To take or maintain possession of property.

Permanent habitable improvement. A dwelling, house, structure, or other improvement presently being used as a residence or domicile for a lasting or indefinite period.

Person. Includes any non-federal entity such as a state or any political subdivision as well as any individual or business entity.

Regional Attorney. The field office representative of the Office of General Counsel, whether titled Regional Attorney or Attorney in Charge, as used in this handbook.

Secretary. Refers to the Secretary of the United States Department of Agriculture.

Trespass. To enter on another's land or property unlawfully; an illegal act causing injury to the person or to the relative rights of another's property.

21.1 - Land Subject to Conveyance

The Small Tracts Act is not a general disposal authority. It is a relief authority designed to resolve specific title claims, innocent encroachments, and related issues. It also enhances efficiency in administration and management of National Forest System (NFS) lands. All rights, title, or interests, including the mineral estate, of the United States in NFS lands may be sold, exchanged, or interchanged under this Act. Use this authority if the sale or exchange is not practicable under other authorities and all of the following apply:

1. The conveyance meets the qualifying requirements for encroachments (36 CFR 254.32), road rights-of-way (36 CFR 254.33), mineral survey fractions (36 CFR 254.34), or conveyance of parcels 40 acres or less (36 CFR 254.37).

The conveyance of the land is in the public interest (36 CFR 254.36), based on consideration of the factors listed below.

- a. Sale, exchange, or interchange of the affected lands is not practicable under any other authority of the Secretary;
 - b. Administration and management of National Forest System lands will be more efficient and will result in improved utilization;
 - c. Access to and use and enjoyment of National Forest System lands by the general public will not be unduly impeded or restricted;
 - d. New or extensive inholdings which would create management problems will not be established;
 - e. Scenic, wildlife, environmental, historical, archaeological, or cultural values will not be substantially affected or impaired;
 - f. Existence of structures authorized under a special use permit or easement which should be considered for conveyance under this provision, and
 - g. Applicable Federal, State, and local laws, rules, regulations, and zoning ordinances will not be violated.
2. It complies with the following limitations listed in 36 CFR 254.35, as listed below.
 - a. Lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, and National Monuments are excluded from any conveyance under these provisions.

- b. Lands within National Recreation Areas may not be conveyed by sale under this subpart.
- c. The value of Federal lands conveyed in any transaction, pursuant to this subpart, shall not exceed \$500,000.
- d. Compensation for lands conveyed shall be of at least equal value, or in the case of interchange, of approximately equal value, and may be in the form of land, interest in land (including minerals), or cash, or any combination thereof.
- e. The sale, exchange, or interchange of lands or interest in lands under these rules are discretionary and shall be made only if found to be in the public interest.
- f. The abutting landowner(s) shall have the first right of acquisition.
- g. The area of land conveyed shall be limited to the minimum necessary to resolve encroachment or land management problems.

21.11 - Initiating Transaction

Small Tracts Act transactions may be initiated by:

- 1. An application (see definition of “applicant” supra, sec. 21.05) by, or the negotiated settlement with, any person who occupies or uses improvements encroaching on NFS land under claim or color of title, or any person who owns land abutting or underlying a road right-of-way, or who owns land interspersed with or adjacent to mineral survey fractions inextricably connected to such land (sec. 21.2); or
- 2. The Forest Service initiating a sale, exchange, or interchange based on a land adjustment plan recommendation for conveyance of mineral survey fractions or certain rights-of-way substantially surrounded by lands not owned by the United States (sec. 21.8).

21.12 - General Procedures

The regulations under 36 CFR 254.30 were designed to provide for accepting applications from:

- 1. Persons seeking conveyance of parcels of 10 acres or less to resolve encroachments on National Forest System Lands whereby:
 - a. No advance notice was given that the improvements encroached or would encroach, and
 - b. The person(s) in good faith relied on an erroneous survey, title search, or other land description which did not reveal such encroachment.
- 2. Persons who own land that was inextricably connected with mineral survey fractions or connected with road rights-of-way

3. Persons seeking conveyance of parcels of 10 acres or less encroached on by a permanent habitable improvement for which there is no evidence that the encroachment was intentional or negligent;
4. Persons seeking conveyance of landfills, sewage treatment plants, and cemeteries currently authorized to operate on National Forest System lands; and
5. Persons seeking conveyance of parcels of 40 acres or less that are physically isolated, inaccessible, or no longer possess National Forest character.

The regulations also provide a means for processing discretionary conveyances of certain mineral survey fractions under public sale procedures that would provide for protection of both the United States and other private interest or rights thereto. Use the specific guidelines in this section relative to encroachments, road rights-of-way, and mineral survey fractions, and additional direction may be found under:

1. Section 21.2 for processing applications for encroachments and Forest Service negotiated title claim cases, or
2. Section 21.8 for Forest Service initiated sale, exchange, or interchange of certain mineral survey fractions and road rights-of-way in the absence of an application, and
3. The general direction applicable to all transactions under sections 21.3 through 21.9, and FSH 5509.11, section 13.11.

21.12a - Encroachments

Forest Service officials shall consider the following factors when determining whether to convey lands upon which encroachments exist:

1. The location of the property boundaries based on historical location and continued acceptance and maintenance,
2. Factual evidence of claim of title or color of title,
3. Notice given to persons encroaching on National Forest System lands,
4. Degree of development in the encroached upon area, and
5. Creation of an uneconomic remnant.

Title 36 CFR 254.32 also allows conveyance of parcels that are used as a cemetery (including a parcel of not more than one acre adjacent to the parcel used as a cemetery), a landfill, or a sewage treatment plant under a special use authorization issued or otherwise authorized by a Forest Service official.

Process parcels ten acres or less that are not eligible for conveyance under previous eligibility conditions and are encroached on by a permanent habitable improvement for which there is no

evidence that the encroachment was intentional or negligent in response to applications or pursuant to the direction provided in the Forest Land Adjustment Plan.

21.12b - Road Rights-of-Way

Process most road rights-of-way applications under section 21.2. Process certain road rights-of-way for which no applications have been received and which need to be conveyed in the public interest under section 21.8. Consider whether there are multiple owners and many users of a subdivision for properties surrounding a right of way when only one person applies, so that the applicant can address access for other users of the right-of-way.

21.12c - Mineral Survey Fractions

Process mineral survey fraction transactions in response to applications or pursuant to the direction provided in the Forest Land Adjustment Plan.

Use the following as a general guide for processing transactions involving mineral survey fractions:

1. Applications. Process applications received for mineral survey fractions, which have distinguishable occupancy and use bounds related to the private estate of adjacent landowner(s), under section 21.2.

Hold applications received in complex mineral survey fractions areas, which will require land adjustment planning to make prerequisite public interest determinations, until conveyances can be accomplished according to the plan. Refer to section 21.2 to process cases identified as falling under the above type criteria and use section 21.81b to process the conveyance of tracts found suitable for competitive public or restricted sale. Refer to section 21.81 for more detailed information on mineral survey fractions criteria.

2. Forest Service Initiated Transaction. Refer to section 21.8 for processing mineral survey fractions and certain road rights-of-way cases identified as being in the public interest pursuant to land adjustment planning and for which no application has been received.

21.12d – Conveyance of Parcels 40 Acres or Less

Process conveyance of parcels 40 acres or less in response to applications or pursuant to the direction provided in the Forest Land Adjustment Plan. If a parcel is larger than 40 acres, then an exchange should be explored, as the regulations do not provide for division of parcels into smaller qualifying parcels.

In addition to the acreage requirement, eligible parcels must meet one or more of the following categories:

1. The parcel is physically isolated in that it does not adjoin other Federal parcels (for instance, it is wholly surrounded by private lands).

2. The parcel is inaccessible in that it has little or no legal access, whether motorized or non-motorized, nor any plan to develop legal access through acquiring easements or adjacent lands.
3. The parcel no longer possesses National Forest character in that the lands no longer support or contribute to NFS purposes or uses, as defined by the applicable Forest Land Management Plan, or the lands have been altered in such a way as to no longer support or contribute to NFS purposes.

21.2 - Applicant Initiated or Negotiated Transaction

An application requesting conveyance of NFS lands must be in writing (36 CFR 254.40).

Thorough documentation may suffice as a written application for the following categories: encroachments; mineral survey fractions; road rights-of-way; landfills, sewage treatment plants, and cemeteries currently permitted to operate on National Forest System lands; qualifying parcels 40 acres or less; and cases amenable to negotiated settlement. The term “applicant” when used pursuant to this section may apply to any person involved in a negotiated settlement.

21.21 - Attendant Facts

1. An applicant shall provide pertinent title documents such as deeds, title insurance documents, affidavits, or surveys when possible, describing the lands involved in an encroachment, or evidence of title to adjacent lands, or the right of occupancy and use of the tract involving road rights-of-way or mineral survey fractions.
2. The applicant may include copies of affidavits, letters, or statements explaining circumstances, such as any efforts by the original locator or a successor to survey and locate the property boundaries. These documents are also used to verify occupancy and use of the tract in conjunction with the owner’s lands, or as the result of other right of occupancy or use.
3. Use the pertinent parts of FSH 5509.11, sections 12 and 13, along with 21.41, as guidelines to identify and assemble the facts necessary to support the application or negotiated settlement. A copy of these guidelines may be provided to the applicant in a convenient format when needed or requested.

21.22 - Special Considerations Applicable to Encroachment Cases

21.22a - Considerations to Convey Lands

In certain cases for predecessor(s) in title, refer to the factors for consideration under 36 CFR 254.32(c).

21.22b - Developed Subdivisions

1. Apply the degree of development factor, (36 CFR 254.32(c)(4)), to the entire subdivision encroachment area as a unit. The resulting unit determination applies equally to each individual lot owner within the encroaching subdivision unit.
2. Treat an individual lot owner within the subdivision encroachment unit as an abutting landowner under 36 CFR 254.35(f).

21.22c - Boundary Location

In determining property boundary status, consider evidence of surveys conducted to locate property boundaries in accordance with time related local customs and practices and the historic location, acceptance, and maintenance of the boundaries so located.

21.22d - Evaluation of Facts

Use normal title assurance procedures along with FSH 5509.11, sections 12 and 13, as the guide for developing and evaluating the facts and evidence relative to encroachment situations (36 CFR 254.32).

21.23 - Action on Proposal

Upon receipt of an application for transfer of lands or when a title claim settlement is proposed (sec. 13.72), the authorized Forest Service official shall:

1. Assign the case a number for reporting purposes through the Lands Automated Data System (LADS).
2. Review the factual evidence submitted with the application or included in a title claim case.
3. Determine if the evidence and attendant facts meet the applicable requirements of 36 CFR 254.32, 254.33, 254.34, 254.35, 254.37, and section 21.2.
4. Determine outstanding rights, interests, claims, withdrawal, reservations, special use permits, and other elements of land status which affect the lands. See FSH 5509.12, Land Status Record System (LSRS) for more details establishing LSRS as the official public record evidencing title and jurisdiction for all National Forest System lands. Revocation of withdrawals is not required under the Small Tracts Act.
5. Determine if the conveyance of lands serves the public interest.
6. Negotiate a modification of the proposal or attach conditions to the conveyance if such a change will yield an acceptable conveyance of lands, whenever necessary.
7. Notify the applicant within 30 days of the date of application that the proposal is acceptable (meets the STA requirements) or unacceptable (does not meet the STA

requirements). It may be necessary to advise the applicant that a longer period of time will be necessary to review the proposal.

8. Report the final case disposition through LADS.

21.23a - Denial

When an application does not meet the STA requirements, the Forest Service official shall explain in writing, the reasons the proposal did not meet the minimum requirements in sec. 21.1 and is not acceptable.

21.23b - Acceptance

When accepting an application or proposing a title claim settlement, the Forest Service official shall notify the applicant or claimant and provide written instructions (use of a conveyance agreement is optional) for processing the transaction. Provide additional details such as:

1. Description and estimate of reasonable costs of conveyance services to be borne by the applicant.
2. Conditions required in the deed to protect encumbrances such as existing easements or permits and/or Federal occupancy and use.
3. Procurement instructions and standards are needed for:
 - a. Title evidence.
 - b. Property valuation.
 - c. Survey and property description.
4. Closing instructions regarding:
 - a. Conveyance document(s).
 - b. Payment method and associated costs (FSM 1580.4 and FSH 1509.11).
 - c. Recording requirements.

21.3 - Conveyance Costs

The recipient of a conveyance shall bear all reasonable costs of administration, survey, and appraisal incidental to the conveyance as determined by the authorized Forest Service official. Exclude indirect overhead, administrative, or other costs or services associated with internal Forest Service processing of conveyances or other costs or services principally benefiting the United States instead of the applicant.

The Regional Forester may, in limited circumstances, waive conveyance costs. A waiver may be appropriate where evidence is clear that the Federal Government made a mistake in a survey, title search, or other conveyance procedure which resulted in an encroachment.

21.31 - Method of Bearing Costs

Determine for each case the extent of reasonable conveyance costs and the appropriate method that will be required of the recipient of a conveyance to bear those costs.

Consider the following when choosing the appropriate method(s) for the recipient to bear the costs of a conveyance:

1. Recipient performs the required conveyance services under instructions provided by the Forest Service.
2. Recipient voluntarily requests that the Forest Service perform certain services that can in certain cases be mutually agreed to under a collection agreement (FSM 1580.4 and FSH 1509.11). Use this procedure to collect funds or to cover services rendered, only upon approval of the Regional Fiscal Agent.
3. Forest Service performs certain work or services and collects the cost of those services from the recipient.
4. Any combination of the above.

21.32 - Optional Conveyance Agreements

Use a conveyance (sale, exchange, or interchange) agreement as needed to document the terms of a proposed conveyance, such as: financing a survey, appraisal, and/or administrative expenses; compensation for the land conveyed; conditions required in the deed to protect existing or future interest; procurement instructions; and timelines.

The use of and contents of agreements are dependent on the individual circumstances of each case. If used, they may include but are not limited to provisions for:

1. Non-Federal party requesting the Forest Service to accomplish the surveys and/or appraisals under a collection agreement.
2. Non-Federal party providing appraisals or surveys in compliance with written instructions and standards provided by the Forest Service.
3. Forest Service providing a Statement of Approximate Equal Value.
4. Non-Federal party providing title insurance for non-Federal lands.
5. Non-Federal party executing road and utility easements.

6. Non-Federal party obtaining or executing waivers for special use permits, grazing permits, and/or mining claims.

7. Non-Federal party providing the required consideration for the lands sold, exchanged, or interchanged.

21.32a - Applicant or Negotiated Transactions

An experienced Realty Specialist may provide guidance for preparing STA conveyance agreements for cases processed under applications and for Forest Service negotiated public sale, exchange or interchange cases.

Optional provisions used for conveyance agreements should be reviewed by an experienced Lands and Realty specialist. Modification of these standard provisions, or drafting of new provisions, may be necessary to address specific circumstances. Structure each conveyance agreement for the individual case at hand.

21.32b - Public Sale Transactions

An experienced Realty Specialist may provide guidance for preparing sale agreements for cases resulting from public sales.

21.4 - Title Approval for Acquisition of Lands

The Department of Justice has established the title standards for the lands to be acquired by the United States: “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/page/file/922431>. Pursuant to subpart 1.4 of the DOJ Title Regulations, acquisitions by exchange are deemed to be purchases to which the Title Regulations apply.

DOJ has delegated the title review role for Forest Service lands transactions to Office of the General Counsel (OGC).

21.41 - Title Evidence

1. For the last-owner's search, any acceptable title document may provide evidence of title in accordance with State Bar standards. These include title insurance, certificates of title, attorney certificates or abstracts that either abstract or ensure the last title instrument of record, and any subsequent conveyances or encumbrances affecting title.
2. Title evidence must show all reservations, exceptions, restrictions, limitations or other rights, interests, conditions or liens affecting title before the period of search but disclosed by instruments recorded within the period of search.

21.42 - Standards

1. Observe State and local laws otherwise required for marketability of title.

2. Follow the title standards adopted by the Department of Justice in “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>.
3. The applicant shall either secure or arrange for the title evidence required by OGC.
4. The Forest Service will handle the actual closing or direct the closing through escrow instructions. Request legal assistance from OGC as needed.

21.5 - Property Valuation

1. The consideration accepted for conveyed lands may be in the form of lands, interest in lands, cash, or any combination thereof (36 CFR 254.35(d)).
2. The value of the consideration accepted in the case of interchange must be approximately equal in value or in the case of a sale or exchange, at least of equal value to the land or interest conveyed (36 CFR 254.42).
3. Valuation is determined by an agency appraiser, or market value is determined through an approved appraisal involving agency appraisers or personnel trained in appraisal waivers.
4. Collected funds must be deposited in the miscellaneous receipts of the Treasury, except for conveyances using 36 CFR 254.32(b) or (d) or 254.37, the net proceeds of which will be deposited in a Sisk Act account.

21.51 - Approximate Equal Value

Refer to 36 CFR 254.42(a), which provides the simplified procedure for determining values for interchanges. Use Approximate Equal Value only for interchange cases. Employees trained in appraisal waivers may prepare a Statement of Approximate Equal Value by comparing and evaluating the elements of value on the lands to be interchanged. Elements of value to consider are size, shape, location, physical attributes, functional utility, proximity of other similar sites, and amenities in the immediate environs of the tracts. The Authorized Officer shall approve the Statement of Approximate Equal Value before the applicant signs it.

21.52 - Equal Value

1. In addition to the requirements in 36 CFR 254.42(b), the qualified appraiser will consider the following factors in determining the sale of parcels when an encroachment area is part of a larger parcel of NFS land:
 - a. Use the summary appraisal format to determine the value of the encroached area.

- b. Use the size of sales available in the competitive private market area to determine the size of the larger parcel (adjacent private land and area of NFS land encroached upon) to be appraised.
 - c. Estimate the value of the encroachment area as it contributes to the larger parcel, based upon the typical size of private ownerships in the subject property's competitive market area.
- 2. The "Limiting Conditions and Assumptions" section of appraisal reports for encroachments must include the following statements:
 - a. The valuation process does not include applicant-owned and/or applicant-controlled improvements on the encroached area.
 - b. The subject property is assumed to be (size of larger parcel; see the preceding paragraph 1b) acres in size as determined by market sales and characteristics of NFS land adjacent to and including the encroached area.
- 3. Equal value for mineral survey fractions and road rights-of-way must be determined by an appraisal of market value.

21.6 - Survey and Property Description

All new surveys, whether metes and bounds surveys or aliquot parts surveys, will be conducted in compliance with 36 CFR 254.43, and must be performed and recorded as specified by either Federal regulations or State laws. Monumentation, marking, and posting are required for all new NFS boundaries resulting from a conveyance including cases where conveyances are based on existing surveys.

21.61 - Standards

Conduct new surveys to standards required by State law. Monument, mark, and post accomplishments to appropriate Forest Service standards. Instructions provided by applicants, must meet Federal standards and must be supplied to private surveyors contracted by applicants.

21.62 - Description Using Existing Surveys

Use existing surveys to describe tracts to be conveyed, whenever possible, as follows:

- 1. By reference to, or by descriptions derived from, adjoining patented land surveys, such as mineral surveys.
- 2. By tracts or lots depicted on a survey plat; such as:
 - a. Lots 3-6, section 16.
 - b. Tract C, Homestead Entry Survey No. 495, sections 18 and 19.

3. By description used to acquire road rights-of-way.

21.63 - Description by Exception in Conveyance Document

Certain rights-of-way and mineral survey fractions are described by the language used in a former patent or deed issued by the United States.

21.64 - Description of Fractions Within Aliquot Parts

Certain parcels of NFS lands within an aliquot part description may be described, for example:

All those mineral survey fractions owned by the United States within the NE 1/4, SW 1/4, section 10. Refer to the legal description verification completed by the Surveyor.

21.7 - Conveyance Document

21.71 - Type of Document

Prepare conveyance documents to or from the United States by drafting a quitclaim or warranty deed and acknowledgement (36 CFR 254.44(a)).

21.72 - State and Local Requirements

Adapt the proposed deed to conform with State and local recording requirements.

21.73 - Delivery

Deliver executed and recorded deeds to the applicant upon receipt of acceptable payment for the lands in cash, land, or interest in lands, or any combination.

21.74 - Recording

Deeds to the United States must be recorded prior to being accepted as payment.

21.75 - Filing and Posting

File a copy of the recorded deed(s) and other title documents in a permanent title file (FSM 5591.2) and update in the Landownership Status Record System (FSM 5590.12).

21.76 - Notice to the Bureau of Land Management

Submit a copy of the recorded deed and survey plat to the Bureau of Land Management (BLM) State Office as needed.

21.8 - Forest Service Initiated Transaction

Use this section as the guide to process the conveyance of mineral survey fractions and certain road rights-of-way identified in the land adjustment plan for conveyance under the Small Tracts Act (36 CFR 254.34).

21.81 - Type of Transaction

In the absence of applications from abutting landowners and after public notice, dispose of qualifying mineral survey fractions or road rights-of-way as needed to resolve management problems through negotiated sale, exchange, or interchange or competitive public sale (36 CFR 254.41).

21.81a - Negotiated Sale, Exchange or Interchange

Use a negotiated sale, exchange, or interchange or any combination thereof when in the opinion of the authorized Forest Service official, the public and private interest and resolution of management problems would be best served by such method. For example, consider the following types of tracts for negotiated sale, exchange, or interchange:

1. Tracts identified as being needed by State, local or other government entities or nonprofit organizations or for other public purposes.
2. Tracts needed by an authorized user to protect the user's interests.
3. Certain tracts, surrounded by non-federal lands without public access, which because of size, shape, and location are not amenable to viable ownership or occupancy and use separate from the abutting non-Federal lands.
4. Tracts with similar or a combination of the preceding type situations that create public and private interests requiring protection from competitive public sale exposure. For example, a developed subdivision with mixed private and local government ownerships, or a ski area complex built on the adjoining private lands.

21.81b - Competitive Public Sale

Use either competitive or restricted competitive public sale based on the following guidelines:

1. Use competitive public sales when competition is likely and there is no overriding need to restrict the competition or make a negotiated sale, exchange, or interchange.
2. Where equitable and fair to existing user(s) or adjoining landowner(s), use a restricted sale as needed to permit them to match, if so desired, high public bid or, if appropriate, limit the number of bidders to affected user(s) or adjoining landowner(s).

21.82 - Analyses

Conduct studies of tracts, individually or within logical project areas, to determine eligibility of the tracts for conveyance under 36 CFR 254.41 and to verify that the conveyance(s) would meet the limitations and public interest requirements of 36 CFR 254.35 and 254.36. Incorporate findings on project areas in the landownership adjustment plan.

Examine all lands eligible for conveyance to identify potential conflicts; such as, mining claims or mineral leases, special uses, Forest Service administrative facilities, cultural resources,

threatened and endangered species of plants and animals, or floodplains or wetlands, and other encumbrances.

Identify measures needed to eliminate, resolve, or mitigate adverse impacts such as:

1. Conflicts with mining claims and/or mineral leases.
2. Conflicts with special uses, easements, reservations, and other encumbrances.
3. Continued use or occupancy or suitable alternative location for sites occupied or used by the United States.
4. Impacts on cultural resources in compliance with the National Historic Preservation Act, 36 CFR 800, and the Programmatic Memorandum of Agreement, regarding implementation of the Small Tracts Act approved by the Advisory Council on Historic Preservation, November 2, 1985.
5. Conflicts with the requirements of Executive Order 11988 (floodplains) and Executive Order 11990 (wetlands).
6. Conflicts with the Endangered Species Act and 50 CFR 402 (Interagency Cooperation - Endangered Species Act of 1973, as amended).
7. Environmental effects of the proposed conveyance and alternatives required by the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 (note)). For categorical exclusions from documentation see FSM 1952.2.

Apply the above listing to assess the factors necessary to determine the appropriate conveyance method(s) for, and the tract(s) to be included in, each case. Provide the necessary supportive background information for negotiating and processing each case by negotiated sale, exchange, or interchange, or by a competitive public sale.

21.83 - Reports

Assemble all relevant data for each transaction into a report summarizing:

1. An accurate description of the tract(s) and tract survey(s), if needed.
2. Appraisal of market value or documentation of approximately equal value for interchange.
3. Tract analyses as outlined in section 21.82.
4. Measures needed to eliminate, resolve, or mitigate adverse impacts and encumbrances.
5. Environmental assessment or categorical exclusion finding (FSM 1952.2).
6. Incidental costs of conveyance:

- a. Conveyance documents,
 - b. Boundary survey, and
 - c. Appraisal.
7. Recommendations and supporting information for the type of transaction to be conducted.

21.84 - Procedure

Based on the preceding criteria, analyses and reports, formalize and process the conveyance transaction beginning with the public notice pursuant to section 21.85. After the public notice, convey the land to: the successful party involved in a negotiated sale, exchange, or interchange or the successful bidder(s) in a competitive public sale proposal. In either case complete the following:

1. Assign a case number for reporting purposes from LADS.
2. Provide procurement instructions and standards when required to show proof of:
 - a. Title evidence.
 - b. Property valuation.
 - c. Survey and property description.
3. Include closing instructions regarding:
 - a. Conveyance document(s).
 - b. Payment procedures for the reasonable costs associated with the conveyance and for the consideration made for the estate conveyed.
 - c. Recording requirements.
4. Report the final case disposition through LADS.
5. General description of the land from the assessment report.
6. Segregative effect of the notice.
7. Location of detailed information and bid forms for competitive public sale tracts.

21.85 - Public Notice

Prepare the public notice of the proposed transaction and have it published in accordance with this section and 36 CFR 254.41(b). The notice must include the following:

1. A legal description of the area(s).
2. Acceptable minimum value based upon the appraisal market value or approximately equal value of each tract.
3. Reasonable costs associated with the conveyance.
4. Conditions of the sale including covenants and restrictions. Also include applicable special conditions such as first right of acquisition by an authorized existing user or occupant or abutting landowner, negotiated sale information, and escrow agreements.
5. General description of the land from the assessment report.
6. Segregative effect of the notice.
7. Location of detailed information and bid forms for competitive public sale tracts.

Allow a period of 45 to 60 days from the date of the first publication notice to the date for consummating a negotiated transaction or acceptance of bids depending on the type of competitive public sale.

Issue a news release for general circulation. Consider the need for a public meeting to ensure that the public has adequate opportunity to learn about competitive public sale proposals.

21.9 - Reporting

Forest Supervisors shall submit individual case information for completed cases to the Regional Forester. Report cases and enter information into the National Lands Automated Data System upon closing.

22 - National Forest Townsites

22.01 - Authority

Certain National Forest System lands in the 11 contiguous Western states [Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming] and Alaska may, upon application, be set aside and designated for townsite purposes up to 640 acres of National Forest System lands providing the lands are adjacent to or contiguous to an established community (FSM 5570.11, para. 2 and 36 CFR 254.20, Subpart B).

22.02 - Objective

To ensure that transfer of the land would serve indigenous community objectives and outweigh the public objectives by maintaining small tract in Federal ownership.

22.03 - Policy

1. Weigh the conveyance of National Forest System lands under the Townsite Act against the community capability of adequately meeting essential community needs that outweigh other public objectives and values that would be served if the lands remained under Federal ownership, or by acquisition of other available and equally suitable private, local government, State, or other Federal lands.
2. Consider land exchange as an alternative to use of the Townsite Act when conveyance or use of needed lands is in the public interest.

22.04 - Responsibility

(See FSM 5504)

22.1 - Application

Upon receipt of an application to purchase National Forest System lands, the District Ranger shall:

1. Determine if the proposal meets the requirements at 36 CFR 254.20(a) and 254.22.
2. Ensure the application includes:
 - a. A legal description of the land desired.
 - b. A development plan for the area applied for, consisting of a narrative section, map description, other appropriate maps, charts, and drawings.
 - c. Statement of reasons why transfer of the land would serve community objectives that outweigh the public objectives and values which would be served by maintaining the tract in Federal ownership.
 - d. Evidence that there are not equally suitable private, local government, State, or other Federal lands available for townsite purpose.
 - e. A copy of current zoning ordinances, covenants, and standards affecting development and use of the described lands which assures the land to be conveyed will be managed so that the use will not interfere with protection and management of adjacent National Forest System lands.
3. Accept or deny the application for further consideration, under the following conditions:
 - a. When the application is denied as not meeting the requirements, a Forest Supervisor shall, in writing, explain the reasons why the application does not meet the requirements, and suggest possible alternatives under other authorities or possible qualifying modifications or notify applicant of appeal rights under 36 CFR 215.

b. When a proposal is accepted, the Forest Supervisor shall:

(1) Notify the applicant of acceptance of application and the extent of studies required to determine what lands are to be conveyed.

(2) Prepare draft Designation Order and Public Notice to be processed under the authorized Forest Service official's instructions (sec. 22.2).

22.2 - Designation and Public Notice

22.21 - Designation Order

The authorized Forest Service official shall, upon receiving an application transmitted, issue a Designation Order designating the lands for townsite purposes and segregating them from other forms of entry, and transmit a copy of the order to BLM.

22.22 - Public Notice

1. The Forest Supervisor shall prepare a public notice and arrange to have it published weekly for 4 consecutive weeks in a newspaper with circulation in the community that the proposed townsite would affect.
2. The notice must include:
 - a. A description of the area.
 - b. Name of the community or governmental body making the application.
 - c. A narrative section from the development plan.
 - d. Instructions and location of the plan for public viewing.
 - e. A description of the segregative effect of the Designation Order.
3. Allow a period of 45 days from the date of the first publication notice for the public to file comments with the Forest Supervisor.
4. Consider the need for a public meeting and/or a news release for general circulation to ensure that the public has adequate opportunity to learn about the proposal.

22.3 - Studies and Reports

After publishing the initial public notice, the Forest Supervisor shall conduct the necessary studies and assessments required under 36 CFR 254.23.

22.31 - Tract Examination

The complete examination involves site inspection, reconnaissance surveys, and an appropriate record search. See FSH 5509.12.

Determine if the lands will meet essential community needs resulting from internal growth and if the lands would serve community objectives that outweigh other public objectives and values that would be served by retention in Federal ownership.

Examine the designated lands to determine whether mining claims or mineral leases, special land uses, Forest Service administrative facilities, cultural resources, threatened and endangered species of plants and animals, hazardous materials, or floodplains or wetlands are present.

Determine measures needed to eliminate, resolve, or mitigate other adverse impacts, such as:

1. Conflicts with mining claims and/or mineral leases.
2. Conflicts with special uses, easements, reservations and other encumbrances.
3. Continued use or a satisfactory alternative location for an administrative or other similar site occupied or used by the United States.
4. Impacts on cultural resources in compliance with the National Historic Preservation Act and 36 CFR 800 (Protection of Historic and Cultural Properties).
5. Contact the Comprehensive Environmental Response, Compensation, and Liability Act Coordinator to consult on the appropriate level of investigation and analysis needed to determine the environmental site condition.
6. Conflict with the requirements of Executive Order 11988 (floodplains) and Executive Order 11990 (wetlands).
7. Conflicts with the Endangered Species Act and 50 CFR 402.

22.32 - Environmental Assessment

A Forest Supervisor shall assess the environmental effects of the proposed conveyance and alternatives required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 (note)). The environmental assessment must consider the environmental effects of the applicant's proposed development and the mitigating effects of applicable State and local laws, zoning ordinances, covenants, and standards. The applicant may make needed environmental studies.

22.33 - Recommendations

Submit a final package to the Regional Forester with a recommendation regarding conveyance of the lands within the designated townsite. The package should include the following:

1. Tract examination information.

2. Environmental assessment and draft decision notice or environmental statement (original report and three copies of the approval page).
3. Public notice information and public responses.
4. Draft deed (if recommendation is to convey).
5. Applicable covenants, standards and zoning ordinances needed to protect public and private rights and interests.
6. Other information or material that clarifies or supports the final recommendation.

22.34 - Action on Proposal

Based on the assessment, studies, and report, the authorized Forest Service official shall approve or disapprove the conveyance of lands in whole or in part. Process the case in accordance with 36 CFR 254.23(b) and (c). Provide copies of the decision document to the applicant and all individuals and entities submitting comments as a result of public notification. All decisions will be subject to appeal under the applicable appeal regulations depending on the nature of the action.

22.4 - Survey and Property Description

Verify the description of lands using form FS-5400-41 (Land Description Verification Federal Land Conveyed). The applicant shall provide for or bear the cost of any new survey needed to adequately describe the applied for lands. All new National Forest property boundaries resulting from a townsite conveyance must be monumented, marked, and posted.

22.41 - Standards

1. Surveys must comply with applicable State and Federal standards.
2. Monumentation, marking, and posting of new National Forest property boundaries must comply with appropriate Forest Service standards.

22.5 - Appraisal

The sale of any land to a governmental subdivision for townsite purposes must be for market value following Forest Service appraisal procedures and the Uniform Appraisal Standards for Federal Land Acquisitions (36 CFR 254.26 and FSM 5410).

22.6 - Conveyance Document

1. Type of Deed. Make conveyances from the United States by following direction and examples of a quitclaim deed and acknowledgement. Also see FSH 5509.11, section 13.36 for other examples that may be useful.

2. State and Local Requirements. Adapt the proposed form to conform with State and local legal requirements.
3. Closing. The executed deed can be delivered upon receipt of consideration (use of an Escrow Agent is optional).
4. Recording. The applicant bears the responsibility and closing expenses, including escrow and recording the deed in the county records.
5. Filing and Posting. File the recorded deed(s) and other title documents in a permanent title file (FSM 5591.2), post to Lands Automated Data Systems (LADS), and update LSRS (FSM 5509 and FSH 5509.12).
6. Notice to the Bureau of Land Management. Submit a copy of the recorded deed and survey plat to the Bureau of Land Management State Office as needed.

23 - Property Disposal

Property identified as no longer needed for administrative purposes can be disposed of by three methods. The first method is pursuant to the Forest Service Facilities Realignment and Enhancement Act (FSFREIA), (Pub. L. 109-54). This authority applies to the sale of facilities with land, whereby receipts from the sale are kept by the Forest Service. Refer to section 26. The second method is excessing property through the General Services Administration (GSA), whereby receipts are not retained by the Forest Service. Refer to FSM 5571.5. Use the pertinent parts of the outline in FSH 5509.11, section 13.11 as a guide for preparing background information for the report, which is required under FSH 6409.31. The third method is Small Tracts Act (STA). The STA has conveyance categories for landfills, sewage treatment plants, and cemeteries currently authorized to operate on National Forest System lands. The STA also allows conveyance to a person involved in a documented encroachment; conveyance of parcels 40 acres or less that are physically isolated, inaccessible, or no longer possess National Forest character; mineral survey fractions; or road rights-of-way, or 10 acres or less encroached on by a permanent habitable improvement for which there is no evidence that the encroachment was intentional or negligent case found by a Forest Service official to be amenable to a negotiated settlement under the STA. Refer to section 21.

23.1 - Determination of Excess Property Using GSA

Lands reserved or dedicated for National Forest purposes whether such lands are within or outside a National Forest boundary are excluded. For instance, acquired lands within an established purchase unit have National Forest lands status and would therefore be excluded. Also lands acquired under Title III of the Bankhead-Jones Act have not been subject to utilization surveys by GSA. A recent court decision confirms the position that these lands are effectively dedicated for National Forest System lands purposes and therefore exempt.

24 - National Grassland and Land Utilization Project Land

24.1 - Procedure

The likelihood of the sale of land with Bankhead-Jones Act status is remote. The Washington Office must approve the region's request to sell lands under this authority. The Washington Office will send instructions for sale procedure and preparation of necessary documentation to the Regional Forester along with the approval. Use section 13.11 as guidance for preparing reports, and section 13.34 and 22.6 for preparing conveyance documents.

25 - Fire Control Improvements and Land Outside the National Forest

25.1 - Applications

States or political subdivisions or their agencies, wishing to obtain improvements for fire control purposes, must apply in writing to the Regional Forester, who must acknowledge receipt of the application. The application must accurately describe the desired property, the need for the property, and the reasons for wishing a transfer of ownership for fire control purposes.

25.2 - Public Domain Land

When a proposed transfer includes public domain land, which is different than reserved public domain or acquired status land, the Regional Forester shall send notice of the proposed transfer to the appropriate BLM state director and request the following:

1. Comments and recommendations,
2. Advice as to whether an agency other than the Forest Service has any jurisdiction over or rights to the land, or if the Secretary of Agriculture has authority to transfer proposed lands.
3. Information as to valid rights or privileges held under the public land laws, and
4. Specific reservations needed by the BLM to protect the public interests.

25.3 - Studies and Reports

The Forest Supervisor shall conduct the necessary studies and assessments to determine if the lands should be transferred. Use the general outline under section 22.3 as a procedural guide in determining the feasibility of the land transfer.

25.4 - Appraisals

Appraisals of transfer property must be in compliance with instructions in FSM 5410 and FSH 5409.12.

25.5 - Negotiations

When the appraisal report has been approved by the Authorized Officer, the Regional Forester shall inform the applicant of the conditions of sale and appraised value, and the request confirmation (or withdrawal) of the application. This step is not necessary in transfers without reimbursement.

The Regional Forester is authorized to approve the transfer of improvements, with or without the land used in connection with them, when the total market value of the items to be transferred does not exceed the following amounts:

1. Up to \$5,000 without reimbursement by the State.
2. Up to \$10,000 with reimbursement by the State.

Only the Chief may approve transfers of property valued in excess of the amounts above.

25.6 - Deeds

In every case involving a transfer of land, the conveyance must be by quitclaim deed. The deed must include a provision for immediate reversion and revestment of title in the United States if the State political subdivision or agency does not use the property for the purpose for which it was transferred within two years from the date of transfer, or for any two-year period within 15 years of the date of transfer (16 U.S.C. 565b-1958).

25.7 - Bills of Sale

Transfers involving only fire control improvements must be pursuant to a bill of sale or by such instrument as the OGC Regional Attorney may recommend. The Regional Forester or the Washington Office Director of Lands and Realty Management shall execute bills of sale depending on the appraised price of the property (FSM 5571.6).

25.8 - Closing Transfer

The Regional Forester shall furnish all deeds or bills of sale to the recipient agency. In transfers requiring reimbursement, the Regional Forester shall submit form FS-6500-89 (Bill for Collection) to the Agency for payment prior to delivery of the transferring instrument. A copy of form FS-6500-89 must be sent to the Forest Supervisor for accounting purposes.

Retain complete files in the Regional and Supervisor's office for a period of 15 years following the transfer because of the reversionary provisions. Post all transfers involving lands in LADS, and update LSRS. See FSM 5590 and FSH 5509.12.

26 - Special Act Sales

26.01 - Authority

See FSM 5401 for general authorities to convey lands or interests in land through a land exchange. See FSM 5570.11 for sale authorities to resolve title conflict and certain management problems.

1. Statewide or National Forest Special Acts. Congress has enacted laws authorizing or directing the sale of National Forest System lands, including lands developed with administrative facilities. These laws are commonly limited to one State or National Forest and include a listing of specific properties. Each act has unique provisions that may require assistance from OGC for interpretation. Some acts may contain an established expiration date. However, most do not expire, unless amended or rescinded, or until all identified properties are conveyed. Authority for specific sales has also been granted through provisions of annual Interior and Related Agencies Appropriations Acts.
2. The Forest Service Facilities Realignment and Enhancement Act (FSFREA). This authority was enacted on August 2, 2005, as Title V of the FY 2006 Interior and Related Agencies Appropriations Act (Pub. L. 109-54). The FSFREA provides that an unlimited number of administrative sites, and up to 10 isolated, undeveloped parcels per year acquired or used for administrative purposes, may be conveyed through sale or exchange. The maximum tract size for administrative sites or isolated parcels is 40 acres. Improvements may be conveyed with or without (offsite disposal) associated land. Proceeds from sales or exchanges are retained and may be used for the acquisition, improvement, maintenance, reconstruction, or construction of a facility or improvement for the National Forest System, and for costs associated with conveyances under this act, including brokerage services.
3. Pilot Conveyance. This authority (Pub. L. 107-63, sec. 329(a)), was repealed by FSFREA, (Section 503(g)). However, FSFREA provides that projects initiated under the Pilot Conveyance authority prior to September 30, 2006, may be completed under that authority. If the property meets FSFREA criteria, the project may be completed under FSFREA. Proceeds from Pilot Conveyances may be used for FSFREA purposes.

26.02 - Objective

See FSM 5402 for general direction concerning the objectives of the landownership adjustment program and FSM 5403 for general policy for the landownership adjustment program.

The objectives of the Special Act Sales program are to:

1. Provide for the efficient conveyance of administrative facilities identified for decommissioning or otherwise specified for disposal in legislation.
2. Implement congressional direction as specified in each authority.

3. Maximize the marketability of the property.
4. Demonstrate the ability to implement and manage a land and administrative site sale program for the benefit of the public and the United States.
5. Establish standards and procedures to protect the interests of the United States.
6. Obtain market value for all properties conveyed under Special Act Sales authorities as determined by appraisal (FSM 5410) or competitive public sale, unless otherwise precluded by law.
7. Provide a source of revenue for the maintenance, construction and rehabilitation of facilities, acquisition of lands, and other purposes authorized by law.

26.03 - Policy

1. Implementation of the Special Act Sales including administrative site sales must follow all applicable laws, regulations, and policy normally associated with lands and realty transactions. Where there is a conflict between legislative language and current regulation or policy, the most recent legislative language will prevail. The Office of the General Counsel will be consulted if language is not easily interpreted.
2. Unless mandated by legislation, sales of resource land may be made only if conveyance does not conflict with the applicable Forest Land Management Plan and sales involving administrative sites and facilities will be made in accordance with the current forest Facility Master Plan (FMP), and has been included on a list to Congress.
3. Competitive public sales are the preferred method of conveyance for all sales and particularly when the:
 - a. Regional Appraiser determines that the property is unique within the market with little or no comparable sale data available, and that a competitive public sale will provide the most reliable indication of market value, or
 - b. Lands are within a developing, urbanized, transitional, or other area where land values are rapidly changing due to their location or desirability in the competitive market.
4. Develop a Sale Implementation Strategy (SIS) report for all planned sales (refer to sec. 26.22).
5. Ensure the broadest possible exposure of sale properties to the open market when they are offered competitively.
6. At a minimum, secure and protect developed properties scheduled for sale and whenever practical, improve the condition to increase the marketability.

7. Third-party entities may provide services to the Agency such as an appraisal, if approved by the Regional Appraiser, survey, marketing and auction processes associated with the sale of special act properties. However, the Agency maintains overall responsibility for public notice, acceptance of work products, valuation procedures, issuance of the decision, administrative appeal procedures, acceptance and award of high bid, and closing procedures of the sale.
8. All appraisal services for sales must follow Forest Service policies and guidelines.
9. Use constraint and discretion regarding the terms, conditions, and reservations placed on the conveyed Federal land, except where the inclusion of these provisions is required by law or for the protection of valid existing rights.
10. Ensure that adequate environmental analysis and public participation are conducted prior to issuing the invitation for bids (IFB) for competitive public sales and prior to making an official offer to any party for a non-competitive direct sale.
11. Competitive public sale IFB must include a minimum bid price provided by the assigned Review Appraiser.
12. Direct sales, when approved, must be for a sales price based on an agency-approved appraisal report.
13. Ensure compliance with the provisions of Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9620(h)).
14. Ensure that excess administrative sites and research facilities are conveyed through appropriate land sale authorities for the benefit of existing or new administrative facilities.
15. Ensure required documents are submitted into the Lands Automated Data System, to Engineering for INFRA and the form AD-107 (Report of Transfer or Other Disposition) to Acquisition Management (guidance for reporting property disposal is addressed in FSH 6509.19, chapter 20.)

26.04 - Responsibility

26.04a - Washington Office

1. Chief. The Chief reserves the authority to forward to the Secretary for approval any proposed special act sales that in the Chief's judgment is precedent setting or of such policy sensitivity that higher-level review and approval are merited.
2. Deputy Chief for National Forest System. The Deputy Chief for the National Forest System is responsible for assisting the Chief in establishing national landownership policies, programs, and objectives. Also, the Deputy Chief is responsible for bringing to

the Chief's attention any special act sales case that may have policy implications or be precedent setting and that may attract congressional or media attention.

3. Director of Lands and Realty Management. The Director of Lands and Realty Management is responsible for approving:

- a. All Sale Implementation Strategy Reports when the market value exceeds \$1 million;
- b. Where the reasonably foreseeable use is expected to change from the existing use, and/or;
- c. When a direct sale is to non-government entity or any governmental entity that has direct or indirect authority over land use regulations pertaining to the property.

4. Chief Appraiser. In addition to the responsibilities in FSM 5404.15 and FSM 5410.41b, the Washington Office, Chief Appraiser, Lands and Realty Management staff, is responsible for ensuring that special act sales comply with all statutory, regulatory, and Forest Service valuation requirements. The Chief Appraiser shall be a permanent member of the National Landownership Adjustment Team.

5. National Landownership Adjustment Team (NLAT). The NLAT is responsible for:

- a. Reviewing and concurring with the findings of sale implementation strategies submitted by the Regional Foresters.
- b. Providing review and guidance, as needed, to regional landownership adjustment staff and real property management staff regarding sale case processing and documentation.

6. Director of Acquisition Management. The Director of Acquisition Management is responsible for:

- a. Ensuring that the sale of administrative sites (land and its improvements) is recorded in the annual Federal Real Property Projects (FRPP) report.
- b. Ensuring that the sale of an administrative site is documented in the five-year real property inventory cycle.

7. Albuquerque Service Center, Property Management Officer (PMO). Property Management Officers are responsible for:

- a. Ensuring appropriate accounting for write-off of values associated with capitalized real property pursuant to FSH 6509.19, chapter 20.
- b. Working with Regional PMOs to provide disposal, sale or transfer information on any real property capitalized assets.

- c. Working with the regional Lands staff to obtain the required documentation when administrative sites are sold.

26.04b - Field Units

1. Regional Forester. Regional Foresters are responsible for:
 - a. Reviewing and approving sale implementation strategies for cases that do not require the Director's approval.
 - b. Reviewing and concurring with decision documents.
 - c. Developing, in coordination with regional OGC, purchase and sale agreements, and deeds.
 - d. Submitting required cases to the National Landownership Adjustment Team for review.
 - e. Managing and conducting competitive public sale procedures for the disposal of administrative sites and facilities.
 - f. Approving invitations for bids.
 - g. Approving and accepting the final bid for administrative site competitive land sales when the final bid meets or exceeds the minimum bid price.
 - h. Executing purchase and sale agreements and deeds.
 - i. Reporting sale accomplishments to the Washington Office.
 - j. Determines use of sale proceeds.

These functions may be delegated to the Regional Director of Lands or equivalent official or the Regional Property Management Officer.

2. Regional Director of Lands or Equivalent Official. The Regional Director of Lands or an equivalent official is responsible for general oversight of the special act sales program and establishing regional procedures and policy direction.
3. Regional Appraiser. Regional Appraisers are responsible for:
 - a. Providing oversight, assistance, and advice on the sale implementation strategy, and other valuation services. This authority may be redelegated to a staff qualified review appraiser.
 - b. Serving as the Contracting Officer's Representative (COR) on appraisal contracts. This authority may be redelegated to a staff qualified review appraiser.

4. Regional Engineer (RE). Regional Engineers are responsible for:
 - a. Ensuring that the Forest have prepared their FMP to standards.
 - b. Ensuring that the Project Manager provides the Regional Property Management Officer with the required documentation when administrative sites (land and its improvements) are sold.
 - c. Ensuring that the Project Manager/Infra Data Steward updates the associated asset records in Infra when administrative sites (land and its improvements) are sold.
5. Regional Environmental Engineer. Regional Environmental Engineers are responsible for providing oversight for all environmental site assessments and all appropriate inquiries (AAI) activities in support of the sale of lands and improvements.
6. Regional Lands Project Manager. Regional Lands Project Managers are responsible for:
 - a. Reviewing the SIS report.
 - b. Submitting to NLAT when necessary and ensure that any additional findings or requirements from the NLAT review are accomplished prior to completion of the sale.
 - c. Submitting the AD-107 form (Report of Transfer or Other Disposition or Construction of Property) to the PMO and Regional Engineer and posting case summaries in LADS.
7. Forest Supervisor. Forest Supervisors are responsible for:
 - a. Recommending and identifying properties for decommissioning or conveyance through the FMP and other Forest Planning processes.
 - b. Conducting appropriate studies and analyses (environmental site assessment, heritage, threatened and endangered species, and other resource issues), title, legal description review, and other property inspections.
 - c. Preparing complete requests for appraisal services, including requests for valuation consultation, market analysis, establishing minimum bid prices, and appraisals.
 - d. Developing the Sale Implementation Strategy Report, Notice of Realty Action, Agreement of Intent, and other required documents. Publish notices as required to various congressional committees and local governmental entities.
 - e. Executing (signing) sale decision documents after review and concurrence by the Regional Forester unless responsibility is held in the regional office.
 - f. Conducting sale closing and post-closing actions.

26.05 - Definitions

The following terms are used throughout this section as they apply specifically to FSFREA or other special act sales. For this section the term conveyance is intended to imply sale. Additional definitions applicable to this section are found in Title 36 CFR, Part 254; FSM 5410.5; FSM 5430.5; FSH 5409.13, section 30.5 and FSM 6440.

Administrative Site. Federal land, improvements, and any associated facility and curtilage, which were acquired or used specifically for Forest Service administrative purposes such as forest headquarters, ranger stations, research stations and labs, dwellings, warehouses, scaling stations, parking areas, fire-retardant mixing stations, lookouts, visitor centers, guard stations, storage facilities, telecommunication facilities, or similar installations for conducting Forest Service activities.

Capitalized Real Property Assets. When the asset is disposed, sold, or transferred, the value must be written off.

Competitive Sale. Property exposed to the open market allowing competition to establish value.

Direct Sale. A non-competitive sale offering the property to a specified party at the market value based upon an agency-approved appraisal report of the offered property. No bidding or other selection process is used.

Market Analysis. The identification and study of the real estate market for specific economic good or service.

Market Value. 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 appraisal, after a reasonable exposure time on the open competitive market.

26.1 - Coordination with Other Federal and State Agencies

26.11 - General Services Administration

The GSA is responsible for general administration and management of Federal real property under the Federal Property and Administrative Services Act of 1949 (Property Act) (40 U.S.C. 101, et seq.). This act established GSA as the agency responsible for disposal of real property excessed by a Federal agency where that Federal agency does not have its own disposal authority. Federal agencies are required to report “excess” real property to GSA for disposal under the Property Act. This requirement does not apply to NFS lands authorized for conveyance under special legislation, including the Forest Service Facilities Realignment and Enhancement Act of 2005 Sales Program.

In 2003, the Forest Service and GSA entered into a Master Service-wide Memorandum of Understanding (MOU), [03-SU-11132426-082](#) that provides for procurement of GSA’s services in marketing, auction, and other realty services. The GSA can provide a broad array of auction

approaches, including online (preferred in most cases), bid by phone or fax, oral, and sealed bid auctions. An [Amendment to the MOU](#) was approved in 2007.

The GSA is also a good source of information concerning property disposal. The GSA website (www.gsa.gov) contains information on a variety of property disposal topics, including an Environmental Guidebook for Realty Specialists. Current and upcoming GSA online auctions may be viewed at the www.auctionrp.com/auctions2/ website.

26.12 - United States Department of Agriculture, Office of the General Counsel

The USDA, Office of the General Counsel (OGC) is responsible for advising the Forest Service on all legal issues. Sale of land does not require a preliminary or final title opinion for the land being conveyed. However, OGC should be consulted regarding binding sale agreements, including the invitation for bids when used in lieu of a purchase and sale agreement, and any conveyance documents, and should be involved in the preparation or review of non-standard terms and conditions used in the invitation for bids, purchase and sale agreement, and deeds. This is especially important when addressing indemnification of liability and disclosure of hazardous environmental conditions. Involve both Realty and Pollution Control Team Attorneys in these situations.

The OGC Pollution Control Team reviews and approves language related to notice, indemnification, access reservations, and other Comprehensive Environmental Response, Compensation and Liability Act (Pub. L. 96-510; 94 Stat. 2767) related language included in the invitation for bids, purchase and sale agreement, and deeds.

26.13 - State Historic Preservation Office

The State Historic Preservation Office (SHPO) is responsible under the National Historic Preservation Act (NHPA) for review and concurrence of Forest Service reports and recommendations concerning disposal of properties containing significant cultural and historic resources that may be eligible for the National Register of Historic Places. Properties considered eligible may require mitigation through documentation, data recovery, long-term protection through deed restrictions, or retention in Federal ownership. The SHPO should be consulted early in the process where eligibility is expected to facilitate a cooperative approach towards identifying the appropriate retention, mitigation or disposition strategy.

26.14 - State Department of Environmental Quality or Equivalent Agency

The role of the relevant State Department of Environmental Quality (DEQ), or equivalent State agency, in the property transfer process under CERCLA depends on the situation. In most cases, the role of the State DEQ will be to identify the State's applicable or relevant and appropriate requirements (ARARs) for the cleanup of hazardous substance contamination. For a "timely transfer" under CERCLA Section 120(h)(3)(A), the Forest Service generally makes the determination that all necessary response action has been taken and State DEQ concurrence is not required. For an "early transfer" under CERCLA Section 120(h)(3)(C), State DEQ concurrence is required for a covenant deferral at non-National Priorities List (NPL) sites (Environmental Protection Agency concurrence is required for the "early transfer" of NPL sites).

For a “clean transfer” under CERCLA Section 120(h)(4), relating to the transfer of uncontaminated property where the Forest Service is “terminating federal government operations,” State DEQ concurrence is required. However, OGC has opined that the Forest Service has the discretion to use the CERCLA Section 120(h)(3)(A) “timely transfer” authority, instead of the Section 120(h)(4) “clean transfer” authority. The OGC recommends that the Forest Service avoid the use of Section 120(h)(4) “clean transfer” authority, unless the Forest Service determines that it is in the interest of the Forest Service.

26.2 - General Procedures

Following are general procedures applicable to all disposals unless different direction is stated by a specific legislative authority. Although these procedures are for sale of property, it is recognized that many special disposal statutes also authorize land exchanges to accomplish the disposal. Unless alternative procedures are specified in the applicable disposal statute, conduct land exchanges following procedures described in FSH 5409.13, chapter 30.

For additional program direction, as well as budget direction related to the funding of special act sale processing, refer to Forest Service Annual Program Direction, Permanent Appropriations, Working Funds, Land and Facility Enhancement Fund (EXSL/EXSC).

Costs associated with conveyance projects should be planned and tracked on the implementation schedules and in LADS. Disclose all conveyance projects in the field unit’s Schedule of Proposed Actions.

26.21 - Property Identification

Property to be sold may be specifically identified in the applicable legislation. In most cases, all rights, title, and interest in the property are sold, including the mineral estate. Often reservations by the United States are needed to protect the public interest.

When legislation identifies a specific property, but provides that the conveyance is discretionary, it may be determined, through the environmental or market analyses, that it is in the public interest to delay or phase a conveyance, or convey only certain portions of a property. Properties planned, as well as completed Forest Service Facilities Realignment and Enhancement Act properties, along with other land and administrative site properties conveyed under other sale authorities, must be identified in the annual Forest Service Budget Justification document.

26.22 - Sale Implementation Strategy

Once a property has been identified for possible sale, the forest and/or regional Lands staff shall prepare a pre-decisional SIS report for the proposal. The SIS report is not an agency decision, but is an internal working document and planning tool for describing the sale proposal. The SIS report considers the feasibility of the proposal, identifies methodologies, and proposes a schedule for processing and completing the sale. The SIS report is usually prepared and submitted to the Regional Forester by the Forest Supervisor; however, the SIS report may also be jointly developed between the Forest Supervisor and the Regional Director of Lands.

A SIS report must include the following:

1. A description of property (legal description and Federal Land Status Report).
2. Compliance with FMP and Forest Plan.
3. A discussion of the sale authority and requirements.
4. Projected level of NEPA compliance (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement) and identification of potential resource issues.
5. A discussion of known or suspected environmental contamination issues, known institutional engineering or land use controls affecting the property, and a description of the general condition of structures and other improvements.
6. Other known issues, complications, support, and opposition and proposed resolution of issues.
7. A discussion of intended marketing strategy, including:
 - a. Most reasonably foreseeable use.
 - b. Recommendations for selling as a whole versus parcelization.
 - c. Sale method (including justification for direct or competitive public sales).
 - d. Advertising.
 - e. Recommendation for contracting of realty services (GSA, Real Estate Broker).
 - f. Recommendations for use of the sale funds.
8. Valuation consultation.
9. Proposed implementation schedule.

Attach pertinent supporting information with the SIS report. This includes maps, photos, Federal Land Status Report, land description verification, valuation consultation, environmental site assessment documents, if available, and an implementation schedule. Provide draft copies of other documents, including, the drafts of NEPA determinations. Refer to FSH 1909.15, section 31, para. 1 and follow the guidelines on categorical exclusions.

When an environmental assessment and decision notice need to be prepared, consider mitigation measures or other pertinent information that will be developed as a result of the environmental analysis. In all cases, the SIS report may be utilized as both a feasibility analysis and an action plan.

Develop the SIS report in coordination with the Regional Appraiser, Regional Real Property Program Manager, Regional Facilities Program Manager and Regional Lands Director. Obtain

Regional Forester approval of the SIS report and Sale Implementation Strategy Review Report (SISRR) prior to transmitting to the Washington Office for National Landownership Adjustment Team review when involving a direct sale to a non-government entity or the value exceeds \$1 million.

26.23 - Valuation Services for Conveyances

Valuation for conveyances must follow policy and procedures provided in FSM 5410 and FSH 5409.12. Unless directed by legislation, all special act sales must be made at a price not less than market value. Early and continued consultation with the Regional Appraiser and appraisal staff assigned to the sale is essential to ensure achieving the most appropriate marketing strategy and valuation for the property. Informal discussion with the appraisal staff is encouraged throughout the sale process.

26.23a - Request for Appraisal Services

The Authorized Officer shall request valuation consultation using the Request for Appraisal Services (RFAS) format during development of the SIS report. The consultation RFAS should be accompanied with as much information about the sale proposal as possible, including a description of the property, improvements and the estate to be sold; the proposed method of sale and marketing; copies of draft terms, conditions, and reservations to be included in the conveyance instrument; information about environmental site assessments (hazardous substances); heritage resources and other resource characteristics; and color copies of maps and photos of the property. After NLAT approval of the SIS report, the Authorized Officer shall prepare the RFAS requesting that an appraisal report, market survey, or other valuation product be prepared for either competitive or direct (non-competitive) sale. The RFAS documents include valuation analysis/consultation, market analysis directed by FSFREA, appraisal report or market survey for establishing minimum bid price for competitive public sales, and appraisal report for direct sales.

26.23b - Market Value

1. Direct Sales. For direct sales, submit an appraisal request to the Regional Appraiser. The opinion of value in the Agency-approved appraisal report is the market value and sale price of the property.
2. Competitive Public Sales. FSFREA allows for the use of a competitive public sale process to determine the market value of the property. For competitive sales submit a valuation request to the Regional Appraiser. A competitive public sale process must be developed in close consultation with the Regional Appraiser or assigned Review Appraiser. In an auction process, a minimum bid price must be established by the assigned Review Appraiser. The established minimum bid price is developed considering a specific estate, physical conditions as of a certain date, appropriate marketing, and is valid for a specified period of time. The document establishing the minimum bid price must include or reference the following information:
 - a. Estate proposed for conveyance;

- b. Effective date of the analysis establishing the minimum bid price;
- c. Any assumptions or hypothetical conditions that pertain to the analysis; and
- d. The timeframe for which the minimum bid price is effective.

Prior to acceptance of a final bid or offer in a competitive process, the details of the process will be reviewed by the Regional Appraiser or the assigned Review Appraiser. Unless requested, the Regional Appraiser or the assigned Review Appraiser will not develop an opinion of the market value of the parcel. The Regional Appraiser will, however, provide advice to the deciding official as to whether the competitive process included sufficient market exposure to generate adequate competition.

Values of property proposed for sale may change rapidly depending on local market factors. It is the responsibility of the assigned Review Appraiser to monitor market conditions and advise the Authorized Officer if there is a significant change in market conditions subsequent to providing the minimum bid price, but prior to sale. It is the responsibility of the Authorized Officer to advise the assigned Review Appraiser if the condition of the property proposed for sale changes, or if there are changes in the marketing efforts described in the SIS report.

26.24 - Property Inspections

26.24a - Environmental Site Assessment

1. Initial Planning. A critical part of the sale procedure is to conduct the appropriate environmental site assessment to determine the presence of hazardous substances and identify the need for cleanup or remedial action. The Authorized Officer or designee should make early contact with the Forest or Regional Environmental Engineer or Comprehensive Environmental Response, Compensation, and Liability Act coordinator to consult on the appropriate level of investigation and analysis needed to determine the environmental site condition, and offer input to the SIS report.
2. Environmental Site Assessment (ESA). For all land transactions, prepare an ESA pursuant to the Standards and Practices for All Appropriate Inquiries; Final Rule 40 CFR 312. Guidance related to environmental site assessments may be found in the Forest Service Guide to Land Transactions, EM-2160-2, dated September 1999; 42 U.S.C. 9620(h) Requirements for Conveyance or Transfer of Federal Real Property and All Appropriate Inquiries. These guidelines were developed to meet AAI due diligence. A primary reason for completing an AAI compliant ESA is to qualify for various liability protections under CERCLA. These protections are not tied to the market value of the property, but rather to the risk of acquiring and/or conveying contaminated property that the Forest Service would then have to pay to cleanup and/or maintain in the future.

To initiate the AAI process, contact the Regional Environmental Professional (EP) to conduct the ESA with qualified in-house EP staff or to let a contract. The EP should review and approve the ESA and determine the need for mitigation or remediation prior to issuance of the decision, invitation for bids or purchase and sale agreement.

3. Contaminated Property. If property is found to be contaminated, cleanup or other remedial action may be required before it can be sold. In some cases, the proposed purchaser may agree to assume responsibility for clean up or remedial action. This is common in situations where existing buildings will be demolished and removed by the purchaser to allow for new construction. The purchaser may also be willing to conduct abatement actions to facilitate use of a property. These arrangements should be discussed with the Regional Environmental Engineer and Office of the General Counsel Pollution Control Team (OGCPCT), and proper language must be included in the invitation for bids, Purchase and Sale agreement and deed. The purchaser may be given a limited period of time to complete cleanup or remedial actions and proof of completion is required. The Forest Service may have monitoring and enforcement obligations under these scenarios.

4. Lead Based Paint and Asbestos Containing Materials. Section 504(d)(3) of the Forest Service Facilities Realignment and Enhancement Act of 2005 exempts the Agency from abatement of lead-based paint (LBP) or asbestos containing materials (ACM). When requesting a Phase 1 Environmental Site Assessment, include a request for LBP and ACM risk assessment. Disclosure of the findings is required and should be addressed in the IFB.

26.24b - Use and Occupancy Property Inspection

Document all uses or occupancy observed and identify whether it is authorized under a Forest Service special use or grazing permit, other federally issued license or permit (for example, the Federal Energy Regulatory Commission (FERC)), is an outstanding right, or is an encroachment or trespass. Include this information, along with any necessary curative actions, on the Federal Land Status Report. Disposition of all permits, licenses, withdrawals, or other encumbrances or outstanding rights must be disclosed in the Request for Appraisal Services. A Certificate of Possession (form FS-5400-37) may be used to document the field inspection, but is not required if inspection results are included as a part of the Federal Land Status Report and Environmental Site Assessment Worksheet. The Certificate of Use and Consent for a Purchase, Donation or Land Exchange (form FS-5400-29) is also not required for conveyances.

1. Forest Service Land Use Authorization. Actively encourage and facilitate an agreement for the disposition of permits, leases, or easements between the non-federal purchaser and the authorization holder when considering the conveyance of National Forest System lands being used and occupied pursuant to a special use authorization. When the revocation of a special use authorization is made a part of the land sale transaction, and it is determined that doing so is in the public interest, the action to revoke must be made pursuant to the terms and conditions of each authorization. Advance notice of such actions is required in 36 CFR 251.60. When the holder of an authorization is a party to the sale, document in the Request for Appraisal Services and the purchase and sale agreement the holder's intent to voluntarily revoke or terminate the authorization(s) upon or before conveyance of the Federal land to the non-federal party.

Conveyance of lands encumbered by recreation residence authorizations require special procedures consistent with procedures used for disposal through land exchange. For

instructions related to conveyance of a recreation residence tract property, see FSH 5409.13, chapter 30.

2. Withdrawals. Do not convey National Forest System lands under withdrawal until the withdrawal is revoked or modified through Bureau of Land Management. Lands withdrawn from entry under the general mining laws do not require revocation. The Authorized Officer shall submit an application to the Regional Office (43 CFR 2310.1-2) to initiate modification or revocation of a withdrawal (FSM 2370 and 2760).

a. Administrative Sites and Public Service Sites (Executive Order 10265). For administrative and public service sites follow the requirements in 43 CFR Part 2370 when requesting revocation. Early withdrawals (pre-1950) were usually from all forms of entry and removal must occur before the Federal land can be patented or deeded. This action generally takes two or more years. Withdrawals since 1950 (Executive Order 10265) were from mineral entry only and revocation is unnecessary if the lands are non-mineral in character or if the United States reserves the mineral rights.

b. Power Withdrawals. Generally, sites withdrawn for hydropower generation must be revoked or modified in accordance with Bureau of Land Management's regulations at 43 CFR part 2320 or Federal Energy Regulatory Commission's regulations at 18 CFR 25.1. However, lands may also be conveyed with the approval of FERC when the conveyance is made subject to the provisions of Section 24 of the Federal Power Act of June 10, 1920 (Federal Power Act), as amended (16 U.S.C. 818).

Lands withdrawn solely for existing or proposed power transmission lines do not require revocation as noted in the Federal Power Commission's General Determination of April 17, 1922. These lands may be exchanged without FERC's approval, providing the conveyance is made subject to provisions of Section 24 of the Federal Power Act.

c. Reclamation Withdrawal or Other Agency Withdrawals. Request the Agency holding the withdrawals to revoke or modify the withdrawal. This action generally takes six to nine months.

d. Withdrawal of Secretary of Agriculture's Authority. Certain withdrawals provide the Secretary of Agriculture authority on public domain land. If revoking the withdrawal removes the Secretary's jurisdiction to administer the lands proposed for conveyance, FSFREA cannot be used. The conveyance would require BLM's authority.

3. Outstanding Rights. Ensure that the use and occupancy allowed through a deeded outstanding right is consistent with the use and occupancy observed on the ground. For example, is the road located on the ground the same as it is described in the vesting deed? Discrepancies need to be addressed and resolved prior to conveyance whenever possible. Disclosure of known discrepancies should be noted in the invitation for bids, and if

purchaser actions are necessary, also in the purchase and sale agreement. A purchaser may voluntarily accept the discrepancy, or agree to work out correction actions directly with the party holding the outstanding right.

4. Encroachments. When encroachments are discovered, the Authorized Officer shall resolve the encroachment prior to conveyance, as provided for in chapter 10, Title Claims and Encroachment, and chapter 20, Sales. A disclaimer of interest or quitclaim deed secured as a resolution of an encroachment must be recorded and included with other title evidence given to the purchaser. In some cases, the purchaser may be willing to work directly with the encroaching party to provide for continued use under a lease, a separate direct sale, or some other resolution. Any encroachments that remain unresolved at the time of issuing the IFB must be disclosed in the IFB.

26.25 - Facilities

1. Protection of Offered Facilities. Many properties proposed for sale contain facilities, such as office buildings, residences, warehouses, and other structures. These facilities may be in use or may be vacant. The Authorized Officer should try to maintain and protect structures throughout the sale process as funding allows, in order to maximize the value of the property and minimize problems that may require cleanup or repair. Maintain a presence on the property to discourage vandalism and keep electrical power on if needed for heat, light, and protection of infrastructure. Monitor the property regularly, if vacant, especially once advertising begins.

2. Occupied Facilities. If facilities are currently occupied, the schedule for vacating the property prior to closing of the sale should be included in the sale implementation strategy. Respect the privacy of tenants and afford them advance notice prior to any in-house or public inspections. Normally, the property should be vacated prior to closing of the sale transaction.

If during the sale process there are delays in the schedule for vacating the property, it is preferable to delay closing of the sale to coincide with the date the property will be vacated. Short delays (a month or two) should not be a problem. However, long delays could result in the need to update valuation and other information or result in additional maintenance costs. It may be possible to close the sale and delay possession of the property by the new owner until vacation is completed. However, this arrangement is not preferred since it complicates the situation and, if not clearly disclosed in the IFB, the purchaser could expect to be reimbursed for loss of use or income from the property.

3. Personal Property. All Forest Service personal property not considered a fixture or part of the property to be sold should be removed prior to sale. Any personal property to remain on the land should be listed in the IFB, and purchase and sale agreement.

4. “As is” Condition. In most cases, improved properties will be sold “as is” with no warranties related to structures, fixtures or appliances, and other facilities. The following paragraph should be included in all IFB documents:

The property is being offered for sale and will be sold “AS IS” and “WHERE IS” without representation, warranty, or guarantee as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and NO claim(s) for any allowance or deduction upon such grounds will be considered after the bid opening.

This language does not relieve responsibilities required by Section 120(h) of CERCLA, where applicable.

5. Curb Appeal. Cleaning up and maintaining the exterior and grounds of a facility can greatly enhance the market or “curb” appeal of a property, increasing market interest and possibly the ultimate sale price of the property. Likewise, cosmetic improvements to the exterior, as well as interior could be relatively inexpensive but yield big returns if the property becomes more appealing to bidders. Fresh paint, replacement of damaged light switches, receptacles, and windowpanes, removal of dead shrubs and debris, thorough cleaning of appliances and fixtures, and other appurtenances may improve the overall marketability of a property.

26.26 - Notice of Proposed Realty Action

As early as possible in the sale process and normally prior to development of the SIS report, public notice of the proposed special act sale should be given. The notice of proposed realty action (notice) should be published one time in a newspaper of general circulation in the location of the property and sent to interested parties, including adjoining landowners, affected special use or grazing permit holders, Tribes, Federal agencies, State and local governmental entities, and the Congressional delegation. The notice should include citation of the sale authority, proposed method of sale, a general description of the property, description of improvements on the property, any terms, conditions, covenants or reservations to be made on the property, the name and address of an agency contact person who can provide additional information, and the name of prospective purchaser for direct sales proposals.

For FSFREA administrative site sales, the Authorized Officer shall consult with local governmental officials of the community in which the administrative site is located. This initial consultation should occur prior to publication of the notice of proposed realty action. Comments received from the notice period are considered in the NEPA scoping process.

26.26a - National Environmental Policy Act of 1969 Requirements Specific to the Forest Service Facilities Realignment and Enhancement Act (FSFREA)

The following NEPA requirements must be addressed for all sales proposed for conveyance under the FSFREA. These requirements apply even when the sale may be categorically excluded from an EA or EIS. Conformance with these requirements must be documented in the sale decision document.

1. Analyze the most reasonably foreseeable use of the administrative site, as determined through market analysis;

2. Determine whether to reserve any right, title, or interest in the administrative site under Section 504(a)(3) of FSFREA; and
3. Evaluate the alternative of not conveying the administrative site, consistent with NEPA.

26.26b - Categorical Exclusions

If no comments were received from the notice of realty action objecting to the conveyance, the reasonably foreseeable use of the property will remain essentially the same as it was in Federal ownership, and there are no significant impacts to resource conditions that can give rise to extraordinary circumstances, then the conveyance action may be categorically excluded pursuant to FSH 1909.15, section 31. This determination will typically be based on the highest and best use or the most reasonable foreseeable use of the property, identified in the valuation consultation, market analysis, or appraisal.

26.27 - Decisions to Approve or Disapprove a Land Sale Proposal

Special act sales may be mandated (must do) or discretionary (may do) depending on the specific language in the legislation. When the sale is discretionary, the decision to approve or disapprove the land sale proposals vests with the authorized officer (FSM 5404.22). Decisions to approve should be based on an environmental analysis conducted in conformance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 (note)) and FSH 1909.15. However, an environmental analysis is not required to disapprove a discretionary land sale.

26.27a - Decision Documents

Refer to FSH 1909.15, Environmental Policy and Procedures Handbook for the appropriate decision documentation. When the conveyance is categorically excluded from conducting an environmental assessment or environmental impact statement, a case file summary is needed. The 5570-land transaction case file summary must contain adequate documentation that the conveyance is in compliance with relevant laws and policies.

In addition to the documentation requirements in FSH 1909.15, the decision document should contain:

1. As part of the description of the estate(s) being sold, include a discussion of any outstanding interests or reservations, such as, water rights to be conveyed, and other encumbrances. Disclose the physical location of the tracts relative to roads and towns and the county in which each tract is located.
2. A summary of public interest determination.
3. For administrative sites, documentation that the proposed sale is consistent with the forest FMP.

If the analysis determines that a case file summary may not be sufficient, a decision memo is another way to document the categorical exclusion.

26.27b - Notice of the NEPA Decision

When a signed decision document on a land sale proposal is made, provide notice, comment and appeal opportunities.

The notice must be published during the initial scoping period, and if categorically excluded from an environmental assessment or environmental impact statement, at least 60-days prior to offering the sale and must provide for a 30-day period for submission of public comments. Comments shall be considered in the environmental analysis. The notice must include: citation of the sale authority; proposed method of sale; a general description of the property; description of improvements on the property; any terms, conditions, covenants or reservations to be made on the property; the name and address of an agency contact person who can provide additional information; and the name of the prospective purchaser for direct sales.

26.3 - Competitive Public Sale Procedures

Competitive public sale procedures are preferred for all special act sales especially when land values are rapidly changing in a competitive market.

26.31 - Marketing and Advertising

An effective marketing and advertising plan is the key to a successful sale. The Forest Supervisor shall develop a sales promotion and advertisement plan as part of the marketing strategy designed to expose the property to the largest number of potential bidders as addressed in the SIS report. Allow adequate time for full market exposure and for property inspections. Develop an attractive sales brochure using maps and color photographs detailing property attributes and instructions for requesting additional information. This should be done prior to/or in conjunction with development of the IFB and in proportion to the type of property and expected level of interest. For high value or complicated properties, it may be appropriate to put the brochure out well in advance of the actual sale to give interested parties an adequate time to plan for the purchase, obtain financing, or deal with restrictions or complications.

Advertise broadly through legal notices; newspaper articles; notices posted at prominent locations; direct mailings to targeted groups, such as the local Chamber of Commerce, Commercial Real Estate Brokers, and other trade groups; and posting sales information and the IFB at Forest, Regional Office and Washington Office internet sites. Newspaper advertising can be expensive, but may be justified for high value sale properties. Investing in advertising and marketing may more than pay for itself in higher bids. Advertising and marketing services may be available from some brokers and professional marketing companies through service contracts or task orders where the company is already on the GSA schedule. It may also be appropriate to prepare a news release to local newspapers.

26.32 - Invitation for Bids

The invitation for bids provides specific information, including the terms and conditions related to the property sale procedures. The executed and accepted IFB establishes a legally binding contract between the successful bidder and the United States. The IFB should include all

pertinent information about the property offered for sale, bidder requirements, including a minimum bid price, the scheduled starting date for bidding, approximate bid closing date, requirements and instructions for bidding, payment and other closing procedures. The IFB includes the legal description, description of improvements, outstanding rights, proposed reservations, and all other restrictions applying to the property to be sold. The IFB should also include directions to the property and dates the property will be open for inspection and include the name, address, and phone number of the contact person who can provide more information and answer questions. All IFBs must include the applicable Comprehensive Environmental Response, Compensation, and Liability Act notification and other information related to the environmental site assessment, as well as applicable indemnification clauses. The IFB should be sent to all known interested parties prior to opening of the competitive bidding process and throughout the competitive public sale as requests are made.

The standard GSA format for the IFB is recommended, and can be easily tailored to an individual or group of properties. When drafting the IFB take care to ensure that it is consistent with Forest Service requirements and specific conditions related to hazardous substances and other reservations and covenants, if needed.

The IFB may ultimately serve as the binding purchase and sales contract if so, described under the General Terms and Conditions - Closing provision of the IFB. The IFB must be reviewed and approved by OGC prior to distributing.

26.33 - Using Real Estate Brokers

Competitive public sale procedures must be used in the acquisition of real estate broker services in accordance with Federal Acquisition Regulations (48 CFR chapter 1; FSH 6309.32 - FAR). The Project Manager will coordinate broker services with a Contracting Officer and/or Property Management Officer.

26.33a - Utilization of Real Estate Brokers

Use of a qualified Real Estate Broker (Broker) is another means to advertise and market, in conjunction with other appropriate tools, when the Forest Service elects to sell a property or properties without assistance from GSA. The rationale for utilizing a broker instead of GSA should be outlined and justified in the SIS report.

A contract must be let if brokerage services are used. The regional Lands staff will contact their local Acquisition Management Contracting Officer, who is authorized to procure services from a private industry Broker, to discuss the preferred services and procedures. The scope of work should be clearly outlined and incorporated in the marketing portion of the SIS report provided to the Regional Forester for approval.

Do not use Brokers for direct sales.

26.33b - Scope of Work for the Real Estate Broker

When utilized, a Broker should serve as a catalyst to further expose the property to the largest number of potential bidders. This may be achieved through a variety of services offered by a

Broker. When deemed to be in the best interest of the project, a Broker may be utilized in a limited capacity or a full-service capacity to facilitate the sale.

Most Brokers subscribe to Multiple Listing Services (MLS). The MLS is the primary tool Real Estate Agents utilize to locate available tracts for potential buyers and clients. In addition, when a property is entered in the MLS, the tract is automatically published within a variety of real estate search engines and global websites; such as realtor.com.

1. Limited Capacity Scenario. Certain sales may involve limited use of a Broker to list the property in the MLS, with the Forest Service coordinating all other aspects of marketing and facilitation of the sale. Under this scenario, an upfront fee (not commission based) would be paid to a Broker to list the property on the MLS with instructions and data as outlined in the scope of work.

When advertising on the MLS, the Forest Service should offer a commission to any licensed Broker procuring a successful buyer with the commission to be paid after closing the transaction. (Payment is handled separately through the contract.) If a commission is not offered, there will be no incentive for a Broker to bring the Forest Service a buyer. In this limited-service capacity, negotiate a reasonable commission of approximately 50 percent of the customary commission a landowner would typically pay a broker to list their property and facilitate all aspects of the sale. The commission offered in this limited-service capacity may range between one and three percent of the purchase price.

Bidding instructions, along with appropriate Forest Service contact information, should be stated within the MLS data sheet. The Contracting Officer should review and approve the draft MLS submittal before it is finalized and submitted in the MLS. Provide the Broker a copy of the invitation for bids to provide potential bidders or other brokers that may contact the Broker's office directly.

In the event the Forest Service procures a buyer for the property when using a Broker in a limited capacity, no commissions would be owed to any Broker.

2. Full-Service Capacity. The regional Lands staff and Contracting Officer may desire a Broker to assume a greater role in facilitating the sale process. Under this scenario, the selected broker may be the primary Contact/Facilitator with the public throughout the competitive public sale process as instructed by the Contracting Officer.

Using appropriate Federal Acquisition Regulations, a Broker would be selected based upon a scope of services outlining the expectations of the regional Lands staff and Contracting Officer. In addition, Broker candidates being considered would be evaluated based on multiple criteria and information provided. The following criteria should be evaluated prior to awarding the assignment to any broker to be utilized in more than a limited capacity:

a. Commission fee.

- b. Schedule of sales promotion and advertising.
- c. Multiple Listing Services subscription/subscriptions.
- d. Knowledge/experience within market area.
- e. Escrow account capabilities.
- f. Accessibility.
- g. Any additional skills and services benefiting project.

Once selected, the Broker will initiate the assignment in accordance with their contract and letter of engagement from the contracting officer. Within the letter of engagement, two steps are needed:

1. The Lands staff Project Manager can sign the commercial real estate contract to obligate the exclusive listing (and sale of the property if included); and
2. The Acquisition Management Contracting Officer will sign the contract to obligate the fees for advertising (and sale of the property if included).

There are several variations in which a Broker may be utilized in this full-service capacity. The extent in which the Broker is to be utilized must be clearly outlined in the scope of work.

In a sealed bid scenario, it is recommended sealed bids be sent directly to the Contracting Officer or designated Forest Service staff to protect the integrity of the sealed bid process. Once opened and reviewed by the Forest Service, the Contracting Officer may, depending on the scope of services to be provided, have the Broker notify the successful bidder to facilitate signature of the Forest Service contract, if the IFB is not to serve as the contract. The Broker would then return the contract to the Forest Service for processing.

A closing involving a Broker to be utilized in any capacity is most easily coordinated through a title company or Escrow/closing Agent. Upon closing, the Escrow/Closing Agent will disburse 100 percent of the proceeds to the Forest Service who will then pay its portion of closing fees, including commissions, under separate payment. This would be reflected within the closing statement generated by the Escrow/Closing Agent.

26.33c - Conditions in the Real Estate Broker Contract

The contract must state whether the property is to be offered as a whole or as separate marketable units and identify any other terms or conditions affecting the conveyance. The Contracting Officer shall determine the time within which the first public advertising of the property is made. The Contracting Officer shall identify the term in which the Broker is expected to market and facilitate the competitive public sale process. The term will be based on the circumstances of the individual case, but the original term should not exceed 12 months.

Depending on the scope of services to be provided by the Broker, the Forest Service field unit may provide the Broker with title information, inspection and other related reports prepared for the property, a list of prospective purchasers and any brochures, pamphlets, photographs, or other promotional material previously published by the agency. The Contracting Officer will provide the minimum bid price, in consultation with the assigned Review Appraiser to the Broker.

The contract with the Broker shall make it clear that the Forest Service:

1. Reserves the right to negotiate directly with any prospective buyer.
2. Has the sole responsibility to accept or reject any bid and to commit the Forest Service to a bid proposal.

If a Broker is working in a full-service capacity under contract with the Forest Service and the Forest Service elects to negotiate directly with a prospective buyer, the agreed upon commission to be retained by the Broker will not be affected. In this scenario, the Broker would continue to be contractually obligated to work towards closure of the transaction, at the discretion of the Project Manager.

The Broker should be authorized to accept the earnest money deposit from any qualified bidder. Upon acceptance by the Forest Service of the winning bid, the Broker will transmit the earnest money to the title company's or closing agent's escrow account following instructions provided in the contract or by the Project Manager. Earnest money deposits, if collected, should be returned to all rejected bidders in a timely manner. Procedures for the handling of earnest money deposits shall be described in the Broker's contract and letter of engagement.

26.33d - Real Estate Broker Commission

Real Estate Brokers (Broker) are entitled to the payment of a commission for the consummation of a sale of the property as a percentage of the sale price or a scale for determining such commission in accordance with the terms and conditions of the contract and within the scale of fees customarily paid for such services in similar private market transactions. If the property is withdrawn from sale, or it is determined by the Government that it would be in the public interest to reject an offer otherwise acceptable as to the purchase price and responsibility of the bidder, the Broker should be reimbursed for direct expenses incurred for advertising as documented. Payment to the Broker is a separate transaction from the sale of the property and processed after closing. Work with the Contracting Officer to follow payment procedures.

26.34 - Auctions

Auctions are an open, competitive public bidding approach and may be conducted using a sealed bid process, oral bidding process, electronic bidding process (online, phone or fax machine), or any combination of these approaches. Determination of the procedure should be made during the SIS stage and involve the Project Manager in coordination with the Contract Officer and the assigned Review Appraiser. The minimum bid price provided by the assigned Review Appraiser should normally be included in the IFB. A decision not to publish the minimum bid price may

be made only with the concurrence of the Regional Appraiser. All sales are for cash consideration and only a cashier's check, a certified check, or a bank/postal money order, in United States funds, may be accepted as payment.

26.34a - Sealed Bid and Oral Auction

In a sealed bid sale, qualified bidders may make only one bid which remains secret until the auction ends, and sealed bids are publicly opened and considered by the Authorized Officer. The Contracting Officer shall consider information in the document establishing the minimum bid in making a decision to award the sale. It may be necessary to obtain additional advice from the Review Appraiser. If there is an acceptable high bid, one that meets or exceeds the minimum bid price, the Contracting Officer may accept that bid and award the sale.

An oral auction allows for multiple bidding in an open environment and stops when the bid has met or exceeded the minimum bid price and no additional bids are made. The high bidder may be awarded the sale upon consideration of the information in the document establishing the minimum bid, and any additional valuation advice which may be appropriate from the Review Appraiser.

A combination of sealed bids and oral auction methods should be used together to give bidders a second chance to increase their bid and helps ensure that there are no tied bids at the end of the sale. Sale of lower value properties, such as small residences, may be accomplished with a sealed bid and/or oral auction conducted by the Contracting Officer using in-house staff or through a contracted Auctioneer. When anticipating the sale of multiple similar properties within a common geographic area, consider grouping them together for one auction event. This may draw a broader audience.

Bids are solicited in a manner described in the IFB. The Contracting Officer is responsible for all in-house auctions and must ensure that qualified staff is present during the auction to handle checks and other funds.

1. Bid Opening and Recording. All sealed bids received are opened and logged in on the date specified. Certify that each bid and bid deposit meets all requirements as provided in the IFB. The Contracting Officer shall account for all bid deposits and secure them with the Unit Collection Officer. Once sealed bids are opened and recorded, the oral auction is conducted and oral bids are recorded in the same manner as the sealed bids. If an oral bid is the highest bid, require the bidder to submit the bid deposit immediately at the end of bidding.
2. Unsuccessful Bids. The Contracting Officer shall return all bid deposits to unsuccessful bidders with a written cover letter sent "Certified - Return Receipt Requested".
3. Highest Acceptable Bid. The highest acceptable sealed or oral bid must be declared and an offer to award the sale made within the time period allowed in the IFB. The award letter should be sent "Certified - Return Receipt Requested" mail and include the purchase and sale agreement, specific instructions on how to fill it out, and any other

additional instructions needed to complete the conveyance. The award letter and purchase and sale agreement should normally allow for a period of 30 to 90 days for submitting the full purchase price for the property. For sales involving complicated issues, a longer period may be allowed for closing to provide added flexibility. If the longer period is not needed, a shorter closing date can be negotiated and specified in the Purchase and Sale Agreement. If the standard GSA IFB is used, the closing period is specified under the “General Terms and Conditions”, under the heading “Tender of Payment and Delivery of Instrument of Conveyance”. The GSA IFB also provides for an “interest payment” if closing is delayed by the successful purchaser under the heading of “Delayed Closing”. Issue a bill for collection for the final purchase price, less deposit, and any amount shown in the IFB for proponent administrative costs and provide receipt for payment for the bid guarantee and for administrative costs upon payment.

If no bids are received at or above the minimum bid price, the assigned Review Appraiser, in consultation with the Regional Appraiser, shall reanalyze the market in the context of the no-bid result and make a written recommendation to the Authorized Officer as to how to proceed with sale of the property.

4. Sale Closing. The sale closes as specified in the general procedures section upon submission of the full purchase price.

26.34b - Progressive Auction

The authorized Forest Service official should use GSA or approved auction service for a progressive (online, phone, fax) auction for high value, high demand, and/or complex special act sales. This request may be made using the procedures outlined in the GSA Master Agreement.

26.34c - Bid Processing

1. Sealed and Oral Auction Bids. For sealed and oral auction bids, the appropriate staff will open bids, determine the acceptability of each bid, secure bid deposits, and identify the high bidder.

2. GSA Progressive Bids. The GSA forwards the highest bids to the project manager for consideration. The highest bidder should be offered the property as soon as possible after close of bidding. If for some reason the highest bid is not acceptable, or the highest bidder withdraws from the sale, the second highest bidder becomes the highest bidder. If the second bidder also drops out, the IFB should have a provision to continue down the line of bidders, with the bidder's concurrence, until an offer to a qualified bidder is accepted at a price that represents market value, or a decision is made to cancel the sale or re-offer the property at a later time.

3. Rejection of Bids. The Forest Service may reject any bid made if determined that it is not responsive or not in the public interest. The IFB should include a provision that the Agency may waive any minor technical defects in bids. Examples of situations where rejection of bids may be considered include:

- a. Filing of bids beyond the date and time specified for bid opening.
- b. A bid that did not include a bid guarantee.
- c. A bid in which collusion or price-fixing is suspected.
- d. Failure to close within period of days allowed from bid acceptance.
- e. Failure to execute the purchase and sale contract, if required, in number of days allowed.
- f. The party submitting a bid is later found to be unqualified or cannot be bound to a legally binding contract.

Rejection of the accepted bid after it has been awarded may require that the sale be re-advertised and subsequently offered again for competitive public sale, or an award may be made to the second or next highest acceptable bidder from the initial offering. It is important to state which process will be used in the IFB.

4. Tie Bids. If two or more equal-value high bids meet all the requirements of the IFB, an award may be made by providing the high bidders with an opportunity to submit a written or oral bid modification. Under terms of the IFB, a modification which makes the terms of the otherwise successful bid more favorable to the Government may be accepted any time it is received prior to award. Offer the tie bidders the opportunity to modify their bid in person or by written notice. Bid modifications that increase the amount of a bid already submitted must provide for an increased bid deposit. Procedures for modification of bid must be covered in the invitation for bids.

26.4 - Direct Sale Procedures

Competitive public sales are the preferred method of processing most conveyances. However, a non-competitive (direct) sale may be made to an Indian Tribe, Federal, State or local governmental entity when deemed to be in the public interest (sec. 26.03) and approved in advance by the Regional Forester. Direct sale to non-governmental entities will be considered on a case-by-case basis and must be approved by the Washington Office Director of Lands and Realty Management. The Authorized Officer's sale implementation strategy report and decision document shall document the need and rationale for any direct sale. Examples of demonstrated need include:

1. The property is needed to protect the equities of current existing governmental entities holding a valid special use authorization.
2. The property is needed to provide an essential public service and other land is not available.
3. The property is significantly encumbered by privately owned improvements authorized under a special use permit and revocation in the public interest is undesirable or unsupportable.

Follow the procedures for direct sales in General Procedures (sec. 26.2). An appraisal report reviewed and approved by the assigned Forest Service staff Review Appraiser is required to determine the sale price at market value for all direct sales.

Since an invitation for bids is not used for a direct sale, all the terms and conditions of the sale must be covered in the purchase and sale agreement.

26.41 - Agreement of Intent

For all direct sales, an Agreement of Intent is required prior to appraisal to set out the basic terms and conditions, responsibilities for accomplishing required actions, and the parties responsible for paying costs of processing the sale. The recipient of the conveyance may bear all reasonable costs of administration, survey and appraisal incidental to the conveyance.

This agreement is similar to the agreement to initiate a land exchange and ensures that the proposed governmental or other approved non-federal entity understands and accepts the intended sale procedures, such as use of a federally approved appraisal to establish the sale price, an expectation of a full cash payment within a reasonable amount of time, and no availability of financing or discounting of the purchase price.

26.5 - The Purchase and Sale Agreement, Quitclaim Deed and Patent

The status of the land determines the type of conveyance document. Most conveyances involve lands with acquired status and a quitclaim deed is the appropriate document. Except under rare circumstances, or unless otherwise authorized in the special sales act, a patent should be used whenever conveying lands with reserved public domain status. The Bureau of Land Management issues all patents, as well as quitclaim deeds for lands acquired through the General Exchange Act. Quitclaim deeds may be issued directly by the Forest Service when conveying lands with acquired status. Under certain limited circumstances, if legally permissible, the Forest Service may issue a quitclaim deed for a conveyance of public domain land. However, notice and submission of the deed and surveys to BLM are still needed to ensure the accuracy of land status records maintained by BLM. Circumstances that may warrant issuance of a Forest Service quitclaim deed instead of a patent would include a significant cost or time delay associated with completion of BLM surveys or patenting of reserved public domain land. Consult with the Regional Surveyor in making this determination. Whenever possible, it is preferable to follow the normal patenting procedures.

The Regional Forester or when delegated, the Regional Director of Lands, shall ensure that the purchase and sale agreement, or the IFB when serving as the purchase and sale contract, and quitclaim deed or patent are accurate, and that terms and conditions are described consistently between documents. Both documents must be reviewed and approved by OGC prior to distribution to the purchaser.

The draft quitclaim deed or patent should be prepared at the time the purchase and sale agreement or IFB is being finalized. Normally, the Forest/Land Adjustment Zone staff can draft the deed with assistance from the Regional Office Landownership Adjustment Program Manager or Title Examiner for OGC's review. As with other types of conveyances, reservations and

restrictions should be kept to the minimum necessary to comply with law and regulations. Covenants required to protect wetlands and other resource values may be appropriate.

Comprehensive Environmental Response, Compensation, and Liability Act notices, reservations and covenants language must be included, if applicable. Consult with OGC Pollution Control Team to determine the applicability of CERCLA Section 120(h) requirements to a particular transaction and for the development of appropriate language for the purchase and sale agreement, and deed or patent.

Upon purchaser's signing of the purchase and sale agreement, the Authorized Officer shall submit the signed purchase and sale agreement, along with the draft quitclaim deed and other supporting case documents, to the Regional Forester or Regional Director of Lands for final execution. The quitclaim deed may be executed at the same time as the purchase and sale agreement is executed. The Regional Office Lands staff shall provide copies of the executed Purchase and Sale Agreement to the Authorized Officer and purchaser. Follow guidance in FSH 5409.13, section 37.42b, when requesting the issuance of a patent or quitclaim deed from BLM.

The Regional Forester, or when delegated, the Regional Director of Lands will sign the quitclaim deed and return to the authorized officer along with specific closing instructions.

26.6 - Closing and Post Closing Procedures

The sale transaction may be closed through an escrow arrangement or over-the-counter, depending upon the complexity of the situation and the desire of the purchaser. Normally, the purchaser should pay for escrow and recording costs and the closing handled in accordance with the approved closing instructions.

26.61 - Escrow Closing

An escrow closing usually involves a simultaneous closing using a title company or attorney as an Escrow Officer. The purchase price, deed, and any other documents are simultaneously exchanged and documents recorded. Provide the Escrow Officer with escrow instructions approved by the Regional Office and OGC. After closing, the Escrow Officer should provide a closing statement and copies of all recorded documents.

26.62 - Over-the-Counter Closing

Over-the-counter closing involves the Authorized Officer meeting with the purchaser and exchanging documents without use of an independent Escrow Officer. Closing instructions approved by OGC must be carefully followed to ensure proper closing; OGC should participate in closings as necessary. The Authorized Officer must ensure that proper payment is received, and documents are properly recorded and copies provided to both parties.

26.63 - Deposit and Expenditure of Special Act Sales Proceeds

The final purchase price is submitted in the form specified in the IFB, purchase and sale agreement, and closing instructions. The Fiscal staff is responsible for ensuring that collected proceeds are deposited into the proper account.

Proceeds from FSFREA and Pilot Conveyance sales must be deposited into the EXSC account. No further appropriation is required for these funds. Proceeds from all remaining special act sale authorities, including special state legislation (EXSL) must be deposited in the EXSL or EXEX account depending on the specific requirements for appropriation. See FSH 6509.11g, chapters 40 and 60 for additional guidance. Funds deposited into these accounts shall not be spent prior to their apportionment by the Treasury. Periodic apportionments will be requested based on balances posted to these accounts. The Regional Forester shall monitor the accounts and assist in determining how the funds will be used in consultation with the Authorized Officer to ensure that funds are used only as the legislation directs.

26.64 - Post Closing Actions

The Authorized Officer shall ensure that the following post-closing actions have been accomplished:

1. All Forest Service personal property has been removed from the property sold.
2. Any outstanding Forest Service permits have been terminated or revoked.
3. Any required easements have been executed.
4. All pertinent title and inspection related documents have been provided to the purchaser.
5. Any required water rights transfer documents have been filed.
6. Forest Service boundary signs have been removed or posted.
7. Appropriate accounting has been completed for asset value write-off, pursuant to FSH 6509.19, chapter 20.

26.65 - Tracking and Reporting

The Lands Automated Data System (LADS) is used to measure annual performance goals and to establish regional targets. Data must be entered into LADS as cases progress and finalized upon case closing.

Upon accepting an offer, contact the Regional LADS Steward. The completion of a land conveyance must be reported in the fiscal year in which the documents of conveyance to the United States are recorded. Post a summary of the conveyance, including administrative benefits, final sales price, and date of deed recordation to the LADS, Land Sale or Conveyance Summary. The Regional LADS Steward will verify the information following the recording of

the conveyance deed. Additional direction for reporting conveyance accomplishments is provided annually in association with the preparation of the budget justification document.

When administrative sites (land and its improvements) are sold, submit the form AD-107 (Report of Transfer or Other Disposition or Construction of Property) to the Regional Property Management Officer, who will forward on to ASC with all needed documentation. Once ASC has all documentation, the Corporate Property Automated Information System will record the real property as being disposed and then it will officially be removed.