**Exchange**

**Scoping and NEPA Analysis**

After an Agreement to Initiate (ATI) has been signed, the authorized officer is responsible for proceeding with the appropriate level of environmental analysis in accordance with the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190, 83 Stat. 852; 42 U.S.C. 4321-4347) and agency policies and procedures. Scoping is the procedure by which the FS identifies preliminary issues and determines the extent of analysis necessary for an informed decision on a proposed action. It is required for all proposed land exchanges.

The Notice of Exchange Proposal (NOEP) (36 CFR 254.8) may serve as notification for scoping under NEPA, except where the proposed exchange is complex or controversial and a more extensive notice and comment process is needed to address the issues and concerns. As part of the scoping process, invite affected federal, state, and local agencies; congressional delegations; potentially affected Federally Recognized Tribes; affected holders of special use authorizations and grazing allotment permits; claimants of unpatented mining claims; adjoining property owners and other interested persons to provide comment on an exchange proposal. The results of scoping are used to identify public involvement methods, refine issues, select an interdisciplinary team, establish analysis criteria, and explore possible alternatives.

Required analyses include water rights, wetlands and floodplains, hazardous materials/petroleum products, and road use. Include a summary of net miles of roads to be gained or lost and cost of bringing acquired roads up to FS standards or, if needed, the cost of closure and rehabilitation. Address the disposition of permitted special uses, grazing leases, and/or third party uses. For exchanges involving cooperative road agreement areas, include an analysis by a Certified Cost Share Specialist.

Be sure to consider an adequate range of alternatives in the NEPA analysis. Although alternatives should generally be acceptable to both the federal and non-federal parties, the FS must consider a purchase alternative (Ninth Circuit Court ruling) and, when appropriate, a deed restriction alternative (36 CFR 254.3(h)). If the non-federal party objects to a direct purchase by the U.S., it is helpful to have a letter documenting their position for the administrative record.

Ensure that the NEPA analysis for a land exchange tiers to Forest Plan direction and specifically addresses how the proposed action contributes to furthering management goals and objectives. In itself, the act of conveying federal land for non-federal land has no environmental effects; therefore, the environmental analysis should focus on the effects of future use and management of the lands acquired and conveyed and on adjoining lands. The foreseeable use of federal lands once in private ownership needs to be disclosed and addressed as part of the cumulative effects analysis.

Reservations of interests or other types of deed restrictions to control future use and development are often proposed as mitigation for effects related to conveyance of federal lands into non-federal ownership. However, deed restrictions should be used only when required by law, regulation, or Executive Order, or when the intended use of the conveyed federal land would substantially conflict with established management objectives on adjacent federal lands, and where clearly and specifically supported by the NEPA analysis. Deed restrictions result in:

* A potential reduction in the appraised value of the federal estate in its restricted condition, causing more federal acreage to be conveyed to equalize the value of the non-federal land.
* A perpetual responsibility of the U.S. to administer and enforce the deed restriction.
* The agency assumes what should be the responsibility of local government, regulation and development of private land.

Each land exchange decision needs to include a summary of “Public Interest Determination” that is supported by the analysis (36 CFR 254.3(b) and 43 CFR 2200.0-6(b)). For the authorized officer to determine that an exchange serves the public interest, the resource values and the public objectives served by the nonfederal lands must equal or exceed the resource values and public objectives served by the federal lands being conveyed. Additionally, the intended use of the conveyed federal land must not substantially conflict with established management objectives on adjacent federal lands. Refer to Factors to Consider in making a Public Interest Determination as noted in 254.3(l).

The environmental analysis and documentation may be done in house or by contract (in larger and more complex exchanges) or a combination of both. Contracts require that the appropriate agency resource specialist provides oversight and approves the final report. Keep in mind that the environmental analysis process is complicated, especially for a large and complex land exchange. Consultation and involvement of NEPA experts, public affairs, and many other specialists is essential.