**FINDINGS – Public Interest Determination**

**BLM & FS**

The regulations are formatted a little different but the wording is almost identical:

(b) *Determination of public interest.* **The authorized officer may complete an exchange only after a determination is made that the public interest will be well served.** [FS: (1) *Factors to consider*.]When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands[FS; and resources], to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of[FS: existing or planned] land use authorizations; promotion of multiple-use values; [FS: implementation of applicable Forest Land and Resource Management Plans;]and fulfillment of public needs**. In making this determination,** [FS: (2) *Findings*. **To determine that an exchange well serves the public interest,**]**the authorized officer must find that**:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership **are not more than** the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

Two Key Findings

MUST Document

[(i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must **equal or exceed** the resource values and the public objectives served by the Federal lands to be conveyed, and]

(2) The intended use of the conveyed Federal lands **will not**, in the determination of the authorized officer**, significantly conflict** with established management objectives on adjacent Federal lands and Indian trust lands. [(ii) The intended use of the conveyed Federal land **will not substantially conflict** with established management objectives on adjacent Federal lands, including Indian Trust lands.] **Such finding and the supporting rationale shall be made part of the administrative record.**

**Very Important**

[(3) *Documentation*. The findings and the supporting rationale shall be documented and made part

of the administrative record.]

**Where is the Public Interest Determination documented? The NEPA Decision**

DR or ROD – BLM

Notice of Decision – FS

**BLM – 43 CFR 2200.0-6(b)(1-2)**

**FS – 36 CFR 254.3(b)(1-3)**

Bottom Line: WE’RE IMPROVING THE PUBLIC ESTATE AND THERE WON’T BE ANY FUTURE HEADACHES AS A RESULT.

**KEY ITEMS UNIQUE TO LAND EXCHANGES**

Regulatory Authority FS - 36 CFR 254 and BLM - 43 CFR 2200.

The most critical outcome (requirement of law) of a land exchange is the requirement that there be a **Public Interest Determination**.

Feasibility Analysis (front end evaluation of viability of land exchange) is now a requirement by both agencies as tool to limit investment by the Federal agency or by the landowner until there is assurance the proposal has some likelihood that it can be successful.

* Signed by Forest Supervisor of Field Manager
* Approved by FS Regional Director or BLM State Director
* If Feasibility Analysis indicates an exchange proposal in in the public interest, draft ATI
* Required review by WO-350/Director concurrence (BLM only)
* Congressional notification required if Federal land value is over $500,000
* Weeks Act Congressional oversight if Federal land value is greater than $150,000; Secretary approval if over $250,000

Agreement to Initiate (ATI) is the “business plan” required for all land exchanges. It identifies all of the major steps, negotiates which party has the major duties for each step, estimates costs and time frames. The draft ATI is prepared and reviewed as part of the Feasibility Analysis.

NEPA FOR LAND EXCHANGES:

* **NEPA analysis is NOT required or necessary to consider and reject an exchange proposal**. Don’t waste limited resources on a weak proposal. Weed these out at the Feasibility state.
* NEPA analysis is based on foreseeable future use of the Federal and non-Federal lands
* Most exchanges can be done with EA (some may require EIS); FS can do CEs for some exchanges

NEPA and evaluation of the resource and public benefit values of the exchanged parcels occurs iteratively and concurrent to the valuation (appraisal process) balancing equal value requirement of land exchanges. The Binding Land Exchange Agreement is a binding contract that locks in the value and the estate to allow the final steps of processing to occur.

The NEPA requirements of a land exchange are often interwoven with the regulatory requirements (Notice of Exchange Proposal, compliance with Executive Orders, Public Benefit Determination, etc.) so ensure that realty staff and NEPA staff work together.

NEPA Unique to Land Exchanges:

* Notice of Exchange Proposal
* Must include a Purchase Alternative and a Sale Alternative (BLM only)
* Disposition of Structures
* Foreseeable Use of lands through Cumulative Effects
* Outstanding Rights and Proposed Deed Restrictions/Reservations disclosed and effects assessed
* Pubic Interest Determination (DN or DR/ROD)
* Notice of Decision
* Values and Cash Equalization disclosed (DN or DR/ROD)